At least 50,000 members by September 1, 1952

See page 357

American Bar Association Journal

May 1952

VOLUME 38 • NUMBER 5

banner *is a headline*

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Contents

MAY, 1952

THE AMERICAN BAR ASSOCIATION JOURNAL is published monthly by the AMERICAN BAR ASSOCIATION at 1140 North Dearborn Street, Chicago 10, Illinois.
Entered as second class matter August 25, 1920, at the Post Office at Chicago, Illinois, under the act of August 24, 1912.
Price per copy, 75c; to Members, 50c; per year, $5.00; to Students in Law Schools, $3.00; to Members of the American Law Student Association, $1.50.
Vol. 38, No. 5. Changes of address must reach the JOURNAL office five weeks in advance of the next issue date. Be sure to give both old and new addresses.

American Bar Association Journal

the official organ of the

AMERICAN BAR ASSOCIATION

published monthly

The objects of the American Bar Association, a voluntary association of lawyers of the United States, are to uphold and defend the Constitution of the United States and maintain representative government; to advance the science of jurisprudence; to promote the administration of justice and the uniformity of legislation and of judicial decisions throughout the nation; to uphold the honor of the profession of law; to apply its knowledge and experience in the field of the law to the promotion of the public good; to encourage cordial intercourse among the members of the American Bar; and to correlate and promote such activities of the Bar organizations in the nation and in the respective states as are within these objects, in the interest of the legal profession and of the public. Through representation of state, territory and local bar associations in the House of Delegates of the Association, as well as large membership from the Bar of each state and territory, the Association endeavors to reflect so far as possible, the objectives of the organized Bar of the United States.

There are seventeen Sections for carrying on the work of the Association, each within the jurisdiction defined by its by-laws, as follows: Administrative Law; Antitrust Law; Bar Activities; Corporation, Banking and Business Law; Criminal Law; Insurance Law; International and Comparative Law; Judicial Administration; Labor Relations Law; Legal Education and Admissions to the Bar; Mineral Law; Municipal Law; Patent, Trade-Mark and Copyright Law; Public Utility Law; Real Property, Probate and Trust Law; Taxation; and the Junior Bar Conference. Some issue special publications in their respective fields. Membership in the Junior Bar Conference is limited to members of the Association under the age of 36, who are automatically enrolled therein upon their election to membership in the Association. All members of the Association are eligible for membership in any of the other Sections.

Any person who is a member in good standing of the Bar of any state or territory of the United States, or of any of the territorial groups, or of any federal, state or territorial court of record, is eligible to membership in the Association on endorsement, nomination and election. Applications for membership require the endorsement of a member of the Association in good standing and are considered in each case by a Committee on Admissions of the appropriate state. If the applicant is a member of the Bar of the state or territory in which he resides or has his principal office, or is a member of a federal, state or territorial court of record of a state or territory in which he resides or has his principal office, the application is referred to the Committee on Admissions for one of such states or territories. If, however, the applicant is not a member of the Bar of the state or territory in which he resides or has his principal office, the application is referred to the Committee on Admissions for one of those states or territories or is referred to the Committee on Admissions for a state or territory in which the applicant formerly resided and to the Bar of which he was admitted. Upon the approval of an application by a majority of the proper Committee on Admissions, an applicant is deemed nominated for membership. All nominations made pursuant to these provisions are reported to the Board of Governors for election. Four negative votes in the Board of Governors prevent an applicant's election.

Effective July 1, 1952, dues are $16.00 a year, except for the first two years after an applicant's admission to the Bar, the dues are $4.00 per year, and for three years thereafter $8.00 per year, each of which includes the subscription price of the JOURNAL. There are no additional dues for membership in the following Sections: Bar Activities, Criminal Law, Judicial Administration, Legal Education and Admissions to the Bar, and the Junior Bar Conference. Dues for the Section of Antitrust Law, the Section of Labor Relations Law and the Section of Patent, Trade-Mark and Copyright Law are $5.00 a year; dues for the Section of Taxation are $6.00 a year; dues for all other Sections are $3.00 a year.

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■ The JOURNAL is glad to receive from Association members any manuscript, material or suggestions of items for consideration for publication. With our limited space we can publish only a few of those submitted, but every article we receive is considered carefully by members of the Board of Editors unless for some reason it is plainly unsuited for our publication. Articles in excess of 3000 words including footnotes cannot ordinarily be published; exceptions are sometimes made as to solicited contributions. The facts stated and views expressed in any article identified with an individual author are upon his responsibility.

Manuscript must be typewritten originals (not carbon copies) and must be double or triple spaced, including footnotes and any quoted matter. The Board of Editors will be forced to return unread any manuscript that does not meet this requirement.

As the work of the Board of Editors is carried on by men who are widely separated in distance and busy in their own professional pursuits, time often elapses before a decision can be made as to whether a proffered article is acceptable and space can be made available for it. We cannot assure that submitted manuscripts not accepted will be returned, although that may usually be done. Because of the small size of the JOURNAL staff, unsolicited manuscripts cannot always be immediately acknowledged, although every effort will be made to do so. A period of four or more weeks is usually required for consideration of material; some manuscripts may require more time for consideration because of the nature of their subject matter.

CURRENT OUTLOOK

American
Bar Association
Journal
★
May 1952

• Complications in social security for lawyers

More legislation has been introduced to bring lawyers under Federal Old-Age and Survivorship Insurance. Pending bills S. 2481, H.R. 6191, 7076, 7152 and 7127 all deal with that subject on one basis or another. Allen L. Oliver, of Cape Girardeau, Missouri, as Chairman of our Standing Committee on Unemployment and Social Security, is sending his Committee's continuing studies to state and metropolitan bar associations to enable them to inform their memberships fully. The Committee is anxious that each such association determine the desires of its members by age groups and instruct its American Bar Association delegates accordingly. That Committee will use any factual material sent to Mr. Oliver by those associations in formulating its report and recommendations to the September meeting of the House of Delegates. The profession will then be able to make known to Congress whether the majority wants to share in both the known and speculative burdens and benefits of social security, either by blanket coverage or by an individually elective basis, or whether the majority concludes that O.A.S.I. does not meet the real needs of the profession at all. Uninformed opinions, prejudice and supposition have no place in this vital determination. In this Association and in all bar associations there is deeply genuine concern for and understanding of the needs of the less fortunate lawyers. No acceptable substitute exists for the combined judgment of these associations as to what will be best for all American lawyers.

• Prospects brighten for lawyers' retirement benefits

The House Ways and Means Committee has voted to hold hearings on the Reed-Keogh Bills providing for retirement benefits for self-employed persons. With our Committee of that name taking the lead, many organizations have continued active efforts to obtain hearings on H.R. 4371 and 4373. Their representatives are now asking to be scheduled as witnesses. The interorganization steering committee met on April 8 to consider possible amendments and to make plans for the hearings. The state and local associations are taking a large part in this effort to equalize the lawyers' tax burden. The membership of the New York State Bar Association and The Association of the Bar of the City of New York have made splendid contributions. Individual lawyers over the country have taken the news that there will be hearings this session as their cue to contact their Congressmen again to ask that the profession's anxiety for fair tax treatment for all self-employed persons be well remembered.

• Bar association project for probate and trust lawyers

How realistic are the mortality and annuity tables used in your state? The chances are that the tables admissible in evidence do not reflect the progressively increasing longevity in the past half century, although the insurance companies are now taking cognizance of these factors in their actuarial tables.

The Younger Members' Activities Section of the Illinois State Bar Association has just reported to its Board of Governors the results of a two-year study on this subject. The report recommends new tables to be offered in that Association's legislative program. They will substantially affect and correct the rights of the public.

• A new bar association project

The Florida Fund represents a successful effort by a bar association to make direct profits for its members. The Florida Bar took stock of the title hazards besetting purchasers and mortgagees of real estate as well as the practitioners who write their title opinions, of the rapid growth and advantages of title insurance and of the extent to which title insurance may divert a portion of lawyers' practice. Their solution was to organize a title insurance company whose shareholders are association members and whose policies are issued upon their approving opinions.

Their example has impelled the Cincinnati Bar Association to make a study of these possibilities and to recommend that such a project be undertaken by the Ohio State Bar Association which now has the subject under consideration. Apart from its merits, this project is typical of the manner in which the profession is constantly benefited by lawyers' co-operative efforts through their bar associations. "All for One and One for All."

• Kudos for Texas, California and Illinois

The State Bar of Texas appears to be first in adopting a standing long-range program of definite objectives analogous to those adopted by the American Bar Association last year and set forth in President Barkdull's page in the October, 1951, issue of the *American Bar Association Journal* at page 750. The six American Bar Association objectives were keyed to the work of its Committees and Sections. Texas went farther to specify and evaluate what had been accomplished and to particularize what was to be done toward each objective. This has been reinforced by a recent extensive public opinion poll. Texas lawyers have an Association that knows where it is going, how it will get there and how far it has gone.

The State Bar of California seems to have followed Texas closely in adopting a long-range program of public relations objectives adapted from the preliminary draft of "Public Relations for Bar Associations" published by the American Bar Association Public Relations Committee. In the area of public relations, which is so new and strange to lawyers, it is a great step forward when a state bar that pioneered in this work can confidently chart a permanent and proved future course. This should be an inspiration to all who have labored in the faith that public opinion of the profession can and should be corrected.

The Chicago and Illinois State Bar Associations' Joint Committee has reported its final draft of a new constitutional judicial article designed to reorganize the Illinois court system in its entirety (the first substantial change since 1848) and to embody the American Bar Association plan of judicial selection and tenure. The proposal is being presented to the members of these Associations. Thereafter, a plan for public, judicial and legislative support is contemplated. This is progress long overdue.

Edward B. Love
Director of Activities
Editor-in-Charge

Remarks on the Separation of Powers:

A Reply to Professor Kinnane

by **Henry W. Coil** • General Counsel of the California Electric Power Company

■ Professor Kinnane's article in the January, 1952, issue was written provocatively to kill "the hoary old myth" that to blend the legislative, administrative and judicial powers in one administrative agency is violative of the theory of separation of powers. It has succeeded in provoking a lively, stimulating and scholarly reply from Henry W. Coil, who is General Counsel of the California Electric Power Company of Riverside, California. Mr. Coil goes after the bureaucracy and Professor Kinnane's article with a sharp pen, and wonders whether Congress now controls the bureaucracy or is controlled by it. Mr. Coil reviews the history and benefits of the separation theory and declares that there is a manifest danger to the liberty and rights of the citizen in permitting any substantial trespass by one branch on the domain of either of the others. He holds that bureaucracy, like autocracy, may be more efficient if the legislative, executive and judicial authority are concentrated in one person or agency, but that efficiency is not the sole or even the main desideratum in government. Government, Mr. Coil tells us in the language of Jefferson, is only a means to the end of providing "safety and happiness".

■ Professor Kinnane's article in the January, 1952, issue of the JOURNAL is described by the editor as provocative. It is. The article consists of three parts: a scholarly analysis of the principle of separation of powers; an exultation over a bureaucracy free of that control; and a sedative to quiet our fears. But Professor Kinnane's chief reputation must depend upon his humor. He refers to these administrative satraps as "dependent underlings" and "small fry".

An article of that kind is, however, not unexpected from one in a cloistered position, whose contact with bureaucracy has been from within and as the holder of the big end of the stick and who is quite unable to conceive how different the problem is for those who are accustomed to hold the small end and who are almost continually baffled in the attempt to find out just where, in adroitly devised, hermaphrodite procedure, they have lost their liberty.

It is quite true, as Professor Kinnane states, that separation of powers is not sacrosanct. Neither is the Constitution; nor is government itself. The human race growing up from infancy must have spent several thousand years without government, constitution or separation of powers, while, at the same time, it had to contend with the hazards of the wilds and meager supplies of food, clothing and shelter. Some such conditions exist even to this day among the Esquimaux in the frigid regions and the African tribes in the tropics, all of whom are ignorant of separation of powers. A good deal depends on time and place. Neither government, constitution nor constitutional principles such as separation of powers is a matter of religious creed, but all are simply practical means of effecting our "safety and happiness", to borrow Jefferson's words.

Separation of Powers Must Be Examined in Context

The idea seems to be implicit in Professor Kinnane's article that separation of powers, or possibly any other constitutional principle, may be dissected out and examined apart from its associations and, if it alone is not completely efficient and effective, it is of questionable or little value. But very few such safeguards or guarantees are fully effective taken out of context or even without the traditions of Anglo-Saxon law and government. For example, of what value would be the "Great Writ" if the incarcerated petitioner were only to be brought before a venal judge in league with the jailer? Of what value would it be, absent the concomitant right to a speedy and public trial? Of what value is the right of trial by jury unless we add "of the vicinage" or words to that effect? Of what value would any trial be if Congress had the power to pass *ex post facto* laws or bills of

attainder? Of what use is due process, which no one can define with finality and to explain which, even our highest court must resort to a term of sport, "fair play"? Does procedural due process mean a trial by impartial judge or jury? Apparently not, for we are told that a hearing before "dependent underlings", who administer some overflow of adjudicative power not conferred on courts and who so mingle the three governmental powers that they cannot be recognized, is sufficient. Constitutionally, a bureau can be empowered to make a conclusive determination of facts without intervention of any court by appeal or otherwise, except only by examining those facts necessary to establish the jurisdiction of the bureau itself.[1]

This makes it all the more important to surround such bureaus with all the safeguards we can and especially to separate their legislative, executive and judicial powers, to the end that both the bureau and the citizen may the better know the nature of the proceeding step by step. Separation of powers is only one part of a mosaic which was constructed during some seven or eight centuries. It is misleading to isolate any part of the whole, for almost all, if not all, parts are interrelated and interdependent.

It is not apparent what support is lent to Professor Kinnane's argument by the statement that separation of powers is only a means to an end. If the end is desirable, the just means to that end is equally so, unless a new and better means is proposed, which is not this case. Government, itself, is only a means to the end of providing "safety and happiness". But that is no reason to abolish it, unless, as Jefferson said, a government becomes destructive to that end and revolution becomes appropriate. Eating is only a means to the end of sustaining life, but it is none the less desirable.

Professor Kinnane cites decisions of the Supreme Court that have tended to break down the principle of separation of powers, and he seems decidedly pleased with that result; in fact, the purpose of his article is to display that satisfaction. No loss of liberty, he says, for there are other protections such as the power of states under our dual system of government. He apparently fails to appreciate that the same judicial body whose work he has just praised has likewise broken down the autonomy of the states, obliterated state lines and established a unitarian system, at least so far as it could; that is, so far as cases were presented that afforded the vehicles for such demolition. No lawyer would call the Supreme Court friendly to the doctrine of separation of powers or states' rights.[2]

As to separation of powers in administrative agencies, Professor Kinnane complains of critics who, he says, confuse faults in the basic legislation with faults in the bureau thereby established; who becloud the issue with charges of "socialism" and bewail the "growth of bureaucracy". That is inevitable and understandable and probably justifiable. If bureaucracy does not wish its powers separated and defined so that their working can be the better seen, tested and challenged, if bureaucracy insists upon mixing, blending and amalgamating its procedure so that the separate elements cannot be analyzed to detect their several faults, why should bureaucracy or its exponents be so exacting? Why should the critic be expected to do just what the character of the bureau prevents him from doing? If one be set upon by a gang armed with clubs and knives, he is not expected to describe each blow and each thrust or to identify each individual as the holder of a club or knife. The assailants as accused defendants have no right to any such bill of particulars—their own conduct has rendered it impossible.

Such a person who has been so assailed is entitled to an audience if he denounces rowdyism in general terms and makes sweeping charges about the prevalence of crime. Indeed, that particular assault is past and gone; it can no longer be prevented. Therefore, the proper reform must be general and sweeping and directed against all public violence.

Bureaus Often Ignore Rights of Respondent

When Congress passes an abstruse act, directed at some general objective, but with little idea of how it is to be practically attained and provides for a bureau to enforce the statute, with power to make rules and regulations; and when that bureau drafts prolix regulations expanding the law in some respects and qualifying it in other respects; and when the respondent finds at a hearing before the bureau all sorts of evidence received, competent and incompetent, relevant and irrelevant, hearsay, secondary and some incorporated by reference to other proceedings, all of which become embodied in conclusive and unassailable findings of fact inextricably mixed with conclusions of law, followed by an order which seems to have been decided upon prior to the hearing, and when he learns that he has but one chance in a hundred of securing any relief from any court—the victim is entitled to some commiseration if he babbles incoherently in attempting to describe what has happened or how and when it happened.

It is said that these roving bands of subordinate officials, exercising, without distinction and without even the necessity for understanding, the three principal powers of government, and being in some functions superior to any court, are no threat to liberty.

Professor Kinnane asks:

> Is a more strict application of the constitutional provisions for separation of powers—more strict even than the Supreme Court has insisted upon—necessary for the preservation of our freedoms?

1. *Crowell* v. *Benson*, 285 U.S. 22, 52 S. Ct. 285. But whether or not the courts have any jurisdiction over a bureau in any particular case may be one of fine technical distinctions, uncertain until the highest court has ruled. *Stark* v. *Wickard*, 321 U.S. 288, 64 S. Ct. 559.

2. The only parts of the Constitution about which the Court can be said to be enthusiastic are the First and sometimes the Fourth and Fourteenth Amendments, and, as to them, it might be called, on occasions, extremely enthusiastic.

His answer to this is generally: No, because bureaus have no inherent powers; there is nothing irrevocable in their authority; the ultimate legislative power resides in Congress; separation of powers is inappropriate to dependent underlings; they are only servants and assistants of the legislative branch; they can be extinguished; they must follow procedural due process; and they possess the remnant of "adjudicative authority" left over after all "judicial authority" has been vested in the courts.

With equal plausibility, it can be argued that there is no loss of liberty or impairment of our rights or convenience if bands of thieves, robbers and desperadoes are allowed to roam the streets of a city because they are only a subordinate class of entrepreneurs; they hold no franchise to use the streets for crime; they are only servants and associates of corrupt officers of the municipality, who can be turned out of office at any election; the ultimate power to suppress them resides in the legislature of the state or city or in the police; they have to observe a certain degree of due process or self-control by making only a reasonable profit and not going to extremes that would arouse too much indignation; and over all there is public sentiment, which can liquidate these "underlings" and "small fry" whenever the people become sufficiently aroused.

But what happens during the long years before disciplinary action is taken? Certainly many respectable citizens have lost their freedom, their money or possibly their lives.

Government's Ability To Reform Is No Guarantee of Liberty

The theory that liberty is not lost, no matter how oppressive government may become, because the government always has the power to reform itself is novel and remarkable. Accordingly, people behind the Iron Curtain must be happy and contented in the thought that nothing is lost, because they always have the natural right to revolt and, in the language of Jefferson, "to establish a new government laying its foundations on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness". But how many generations must pass their lives in despair before their descendants may enjoy the fruit of revolution?

By loss of liberty, Professor Kinnane evidently means eternal loss; suspension for a few decades or a century is irrelevant. Would a man be content to have his food supply cut off, provided he were promised a banquet at the end of, say, twelve months? Liberty that can only venture abroad at limited or widely separated intervals is not worth much.

The examples given by Professor Kinnane illustrate these points. He refers to the dismemberment of the National Labor Relations Board in 1947. But that board was created in 1935. Hence, if its reformation was justified in 1947, it had lived an illegitimate life of twelve years, during which it had certainly interfered with the liberties of many citizens. Next is cited the reorganization of Reconstruction Finance Corporation in 1951. That body was set up in 1932 (not a New Deal enterprise as some may suppose) for the purpose, as its name indicates, of rescuing sinking businesses which were thought to be fundamentally sound, but which were the victims of circumstances beyond their control arising out of the Great Depression. Obviously, that organization should have been liquidated with the end of the Depression, certainly not later than 1938 or '39. But this depression-bred bureau was allowed to live right on into the greatest period of inflation this country has ever seen and to add credit to an all-too-abundant credit. The Administrative Procedure Act is cited, but see how long and with what great effort of the American Bar Association and many others that reform was accomplished. It is worthy of note also that, among the reforms in that Act, was one imposing some measure, at least, of separation of powers by making hearing examiners more or less independent of the bureau for which they act. But this was a very mild repair, for after all the bureau has the authority to overrule or disregard the recommendation of the hearing examiner as bureaus have frequently done since the establishment of that system.

Henry W. Coil received his A.B. degree from Colorado College in 1910 and his LL.B. degree from the University of Denver in 1914. He was admitted to the Colorado Bar in 1914 and the California Bar in 1919. Since 1926 he has been General Counsel for the California Electric Power Company and associated and predecessor companies.

While there may be, from time to time, mild reforms in administrative procedure, talk of extinguishing or liquidating a bureau has a naïve and hollow sound. How many examples can be cited in the past half century? Not long ago it came to light that the Spruce Corporation was still operating. That was established during World War I to procure spruce wood from which to make airplanes and from which airplanes have not been made for the past twenty years, at least. Some bureaus have reached the stage where they can defy Congress and effectively forestall any effort to limit their activities or expansion. This idea need not be developed here for there are other sources from which anyone inter-

ested may learn the enormous growth and political power of our bureaucracy, even at the voting booths. There is a *bona fide* doubt whether Congress controls bureaucracy or whether bureaucracy controls Congress.

Obviously, Congress has power under the Constitution to reduce or dissolve bureaus and to strike off their shackles upon liberty if it, itself, has liberty; but some of us remember the time when Congress was not quite *sui juris,* but, ignobly and without embarrassment, bore the brand "rubber stamp". If administrative tribunals are amenable to the will of the peoples' representatives in Congress, but the Congress is a puppet of a President, where then does liberty lie? We must not be deceived into reliance on theoretical constitutional powers or principles after those powers and principles have corroded. In every instance of decadent liberty, it has been the habit of the people to cling to and cherish constitutional forms long after substance has vanished. In the opening paragraph of his *Decline and Fall of the Roman Empire,* speaking of the eve of the decline, Gibbon remarked: "The image of a free constitution was preserved with decent reverence; the Roman Senate appeared to possess the sovereign authority, and devolved on the emperors all the executive powers of government."

Separation of Powers Derived from Montesquieu

It is fairly certain that the Founding Fathers obtained the idea of separation of powers from Montesquieu's *Spirit of Laws* (Geneva, 1748) and Montesquieu probably received his inspiration from the Roman Republic, for in 1734 he had published his *Glory and Decline of Rome.* Under the Republic, the Romans had developed the principle of separation remarkably well for that early period. While we are none too sure of the precise functioning of different parts of the Roman Republic as they varied from time to time, it appears that the *Comitia* was the legislative body, somewhat influenced by the Senate, which actually exercised only advisory powers, but which enjoyed great prestige in consequence of the noble or venerable character of its members. The executive power was divided between two consuls, one exercising authority over civil and domestic matters and the other over military and foreign affairs, and the tribunes, the especial guardians of the plebeians. Courts were somewhat rudimentary and probably (like our administrative tribunals) only appendages to the executive branch. The idea of independence in the judiciary seems to have been absent, for, indeed, it did not appear in England until the time of Sir Edward Coke.

Spirit of Laws was not only influential in the Colonies, but was highly regarded in England. It must not be forgotten that the colonists were Englishmen; they thought like Englishmen; and they acted as Englishmen had done over several centuries, back to a time beyond Magna Charta. Their ideas were shared by several British statesmen and by a large section of the British population. The colonists did not follow Montesquieu because he had any legal authority over them, but because his argument was reasonable and persuasive.[3]

Montesquieu said:[4]

> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner.
>
> Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.
>
> There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

But separation of powers has a value not usually remarked. It enables the honest bureaucrat to have a better understanding of the nature and effect of his own acts and it enables the people to detect abnormalities long before they have become malignant. A mechanic can locate trouble in an automobile the better by being able to examine the ignition system alone, then the lubrication system, and so on with the cooling system, fuel system, transmission and differential, whereas, if these were all combined into one electromechanical unit (assuming that were possible) nothing less would suffice than to tear down and rebuild the whole vehicle.

It is true that separation of powers is in practice somewhat inconsistent with the basic principle on which administrative bureaus, as we know them, operate. In the opinion of some, it would destroy their effectiveness; but it might just as probably promote it. Nobody can say, because no such experiment has been attempted, except to the slight extent above mentioned in the Administrative Procedure Act.

Efficiency Is Not Most Important Consideration

There is no doubt that amalgamation of powers and freedom from all but a small degree of judicial review, facilitates bureau operation, smooths the bureau's road and makes for speed. Just so, an absolute monarchy or a dictatorship is the most efficient and effective and, were it possible to find an ever-living, all-wise and perfectly moral chief magistrate, that would be the kind of government to have. But we have no such material; the people and their rulers elected from among the people are imperfect and have private motives of

(Continued on page 441)

3. *The Federalist,* Volume 1, cc. XLVII and XLVIII shows that most of the states had adopted constitutional separation of powers prior to 1787 and that nowhere was complete separation deemed desirable, but rather separation with interdepartmental checks.

4. *Spirit of Laws* (Nugent) Volume 1, Book XI(6).

The American Law Student Association:

Developing Future Leaders of the Bar

by **James M. Spiro** • of the Illinois Bar (Chicago)

▪ Much has been written in recent years about giving practical training to law students. Mr. Spiro describes a recent successful development in this field—the creation, acceptance and growth of the national student bar association sponsored by the American Bar Association. The author not only points out the multitudinous activities of the organization which will make better lawyers but also stresses the need for practicing lawyers to assist this activity which means so much to the legal profession and to the public. Those interested in the future of the Bar will find this article most informative.

▪ A young giant has arisen among the bar associations of the United States in the past several years. It is the American Law Student Association, a national organization of more than 30,000 law students who, as embryonic lawyers, have joined together in furtherance of their common professional interests.

Organized at St. Louis, Missouri, on September 5, 1949, under the sponsorship of the American Bar Association, the American Law Student Association represents the student bar associations of ninety-four approved law schools. Its members gather at yearly national and regional meetings, work on problems which concern both their legal education and later practice of law and in general follow a program of activities similar to those of the active and most effective bar associations whose membership is drawn from licensed members of the Bar.

The name of the Association is well known to law students and also among some members of the Bar. Yet few people are acquainted with the series of events that led to the formation of this organization, its accomplishments to date and its vast potentials. What is recorded here may serve to publicize the previously uncollected facts.

During early depression days, law students, like the younger lawyers, developed an increasing interest in their future in the legal profession and in the organized Bar. Ultimately, they began to organize into sporadic groups referred to as "student bar associations". This development continued until, in August of 1936, it became widespread enough to attract the attention of the American Bar Association.

The latter organization probed into this bubble of student activity and found a movement that it considered significant. The general consensus was that the formation and operation of student organizations should be encouraged, but it was felt that this could best be done by the state and local bar associations in states where law schools were located. To be sure that nothing would be overlooked, however, the subject was referred to the American Bar Association Section of Bar Activities for study, investigation and report.

In January of 1938, almost one and one-half years later, the Section reported it had no definite recommendations, but was undertaking a survey to determine the full status of the student bar association movement. Impetus to the survey was given when the American Bar Association President, Arthur T. Vanderbilt, accepted an invitation to speak at Columbia University on February 12, 1938, before a group of law students interested in forming a national law student organization. His experiences on that day moved him to appoint an American Bar Association Special Committee on Student Bar Associations, its function being to examine the organizational activity among law students and determine whether the movement should be directly or indirectly encouraged by the American Bar Association.

This article is a report prepared for the Survey of the Legal Profession.

The Survey has secured much of its material by asking competent persons to write reports in connection with various parts and aspects of the whole study.

Reports are released for publication in legal periodicals, law reviews, magazines and other media as soon as they have been approved by the Survey Council's Committee on Publications. Thus the information contained in Survey reports is given promptly to the Bar and to the public. Such publication also affords opportunities for criticisms, corrections and suggestions.

When this Survey has been completed, the Council plans to issue a final comprehensive report containing its findings, conclusions and recommendations.

Law Student Groups Organize Themselves

During the several years the American Bar Association was considering the problem, law student groups had shifted emphasis from purely social aims to undertaking serious work in preparation for the practice of law. Some groups were student bar associations which confined their activities to the student body of their own schools; another was an association whose membership was composed of individual students from various law schools; and the third type was a conference of law students without any formal membership.

The number of individual student bar associations varied greatly as the interest and support which generated them increased or died in various schools. But there always remained among law students generally sufficient interest to help keep organizational activity alive. This was so strong in the New York area that an American Law Student's Association was created in December, 1937,[1] the law schools of Brooklyn, Columbia, St. John's and New York Universities serving as its nucleus. Its membership was composed of individual students who were entitled to participate in the annual convention of the Association as well as to work with the chapters at the law schools which they attended. In many respects the organization bore great similarity to the law school fraternities and undoubtedly represented an outlet for those students who were not members of established fraternities or similar groups.

About the same time, there arose the Eastern Law Students Conference. It had no formality as to membership in the same sense as the American Law Student's Association. Instead, conferences were scheduled at centrally located law schools and law students in the surrounding vicinity were invited to attend. The primary purpose of the conferences was to hold discussions on topics of current interest selected by the students.

The American Bar Association Special Committee on Student Bar Associations took cognizance of these activities and also of the program of the Illinois State Bar Association, which since 1931 had a system of junior memberships for students enrolled in law schools in that state. It determined that the American Bar Association should keep closely in touch with the development of this activity and should inaugurate a program designed to satisfy as far as possible two fundamental needs of the student: the first was the need of the student for a better understanding of the practical aspects of the practice of law; the second was the need of some outlet for his idealism with respect to professional matters. To accomplish this purpose, it recommended that the work be turned over to the Junior Bar Conference with instructions to establish a committee for the project. But at the same time the Committee specifically excluded several types of activity from the scope of the Junior Bar Conference's work. It did not believe there should be a student membership classification in the American Bar Association; it did not consider it proper to undertake a campaign to organize student bar associations; and it did not feel there should be any attempt to expand the distribution of various legal periodicals among law students. With these limitations, the American Bar Association Board of Governors adopted the Committee's recommendation in May of 1938 and passed on to the Junior Bar Conference this important assignment.

Having themselves so recently been law students and new members of the Bar, the members of the Junior Bar Conference were well adapted to the project. Brimming with enthusiasm, they quickly went to work. A Committee on Law Students was formed within the Junior Bar Conference, the approved law schools were contacted to ascertain interest in a proposed program, and activities were initiated to unify the displayed interest and to cultivate participation by students. The work of the committee, ably chronicled in the Survey Report on the Junior Bar Conference[2] and therefore not discussed in detail here, expanded rapidly. Despite the intervention of World War II, and a resultant tremendous decrease in law school enrollments, it continued working during the war with eyes on the future.

When the war ended and law schools once more became filled with students, the American Bar Association no longer was the only nationally organized bar group interested in law students. In 1946 the National Lawyers Guild examined the law student field and at its Cleveland convention in July of that year resolved to carry out, in conjunction with student chapters, a program of practical assistance to students.[3] To this end, it amended its constitution to provide for student chapters and individual student membership. Further, it moved to create a National Student Committee composed of ten lawyers and ten student members of the Guild, laid the groundwork for student chapters to begin operation at the Universities of California, Columbia, Michigan and New York during the fall of the same year and looked toward a national conference of Guild student chapters.

Later, namely, at the February, 1948, convention of the National Lawyers Guild in Chicago, the Executive Secretary of that organization reported on the growth of its student section.[4] In about one year fourteen functioning student chapters were created in as many schools, taking in some 600 students. At the same convention, student delegates present passed a resolution that the student chapters of the Guild be

1. This organization should not be confused with the American Law Student Association, which is the subject of this report. Similarity of the names is accidental. The new Association never has had any connection with the earlier organization which had disappeared from the scene before 1949.

2. "Report on the Junior Bar Conference", by James D. Fellers for the Survey of the Legal Profession.

3. For the type of program to be carried out, see 6 Law. Guild Rev. 561 (1946).

4. 8 Law. Guild Rev. 300 at 303 (1948).

organized into a national student organization, to be known as the National Student Division of the National Lawyers Guild.[5] This was actually done on November 5 and 6, 1948, when a student convention was held in New York City, the student division being within the framework of and subject to the constitution of the National Lawyers Guild.

In the meantime, the law students themselves began reviving the student bar associations which had arisen in the prewar years. Since these still operated on a local level, they gave no consideration to the problems and subjects which were common to law students everywhere. It was obvious that student organization on a national level was needed, as the students themselves had indicated back in 1938.

Eastern Law Students Form National Conference

Then, during the fall of 1946, the editors of the *Columbia Law Review* began discussing with their counterparts at Harvard, Pennsylvania and Yale the possibilities of inaugurating a national conference of law students to discuss and evaluate legal education and preparation for the profession. This led, after six months of student planning, to the holding of a National Law Student Conference on Legal Education.[6] The Conference met on July 11 and 12, 1947, in New York City. From forty-two law schools throughout the country, 125 students gathered in an intent discussion and exchange of ideas. So profitable was this gathering that it was decided to appoint a Continuation Committee composed of University of Wisconsin Law School delegates.[7] In fact, a further meeting was held when the University of Pittsburgh on March 25 and 26, 1949, was host to a Middle Atlantic Regional Conference composed of twenty-nine delegates from eleven law schools.

Present at the 1947 inaugural meeting in New York City was the Chairman of the Junior Bar Conference Committee on Law Students. When the delegates indicated to him a strong desire for a permanent association of law students, they were surprised to learn that the Junior Bar Conference already was working toward a national union of student bar associations. Great interest was displayed in this possibility, which fact gave considerable encouragement to the JBC Committee.

Rather than hurriedly create an organization which might not have a sound basis for growth and development, the Junior Bar Conference committee continued a careful study of the problems involved. It undertook a survey of the law schools as to their views, proposed to the American Bar Association Board of Governors a number of plans, then adjusted, compromised and fought for a law student organization. The result was the authorization by the American Bar Association Board of Governors in February, 1949, of the formation by the Junior Bar Conference of an American Law Student Association[8] with a constituent student association in each approved law school.

Invitations to an organizational meeting immediately were sent to the students in approved law schools. The response from students and deans alike was most satisfying, confirming the belief that this was an activity which would fill a real need and had portentous possibilities.

American Law Student Association Is Organized at St. Louis

On Sunday, September 4, 1949, at 10:00 A.M., 104 delegates representing forty-six law schools convened in St. Louis' Hotel DeSoto to consider adopting a constitution and by-laws for the American Law Student Association. Preliminary drafts were considered, then revised and finally approved the afternoon of the same day. During September 5, delegates interchanged ideas on such problems as functions to be sponsored by local student bar associations, means of raising money to operate the student Bars effectively and placement in the profession.

Moffett Studios

James M. Spiro was the first Director of the American Bar Association Law Student Program and now is consultant to the Junior Bar Conference Committee on Law Students. He practiced law in Chicago and taught at Roosevelt College until recalled to active duty with the Army's Judge Advocate General Corps last year.

The first official meeting of the new ALSA House of Delegates convened the morning of September 6 to elect officers of the Association for the year 1949-1950. On the afternoon of the same day, the ALSA Board of Governors met for the first time and the American Law Student Association was on its way.

How was the American Law Student Association to operate? Its executive staff was composed of five national officers—a president, an executive vice president, a secretary, a treasurer and a sergeant-at-arms. These people were assigned the duty of planning and guiding the organization's activities. Since many of those activities were to be on a local level, the country was divided into regions to be supervised by circuit vice presidents. As the federal judicial circuits were followed in establishing these areas, there were eleven such officers.

5. 8 *Law. Guild Rev.* 333 (1948).
6. A complete report of the conference is contained in 1 *Jour. Legal Educ.* 73 and 221 (1948).
7. 1 *Jour. Legal Educ.* 250, footnote 30.
8. Although the name chosen was similar to that of the group formed in New York City in 1937 as the American Law Student's Association, the choice was made without recollection of the previous group.

The legislative end was not neglected. A bicameral legislature was provided, one being known as the House of Delegates and the other as the Board of Governors. The first House was composed of delegates sent by member schools to the annual meeting each year. The second House had as its members the five national officers, eleven circuit vice presidents, and, *ex officio*, five Junior Bar Conference officials and two appointees of the American Bar Association's President. As was true of the officers, these houses were to function for the duration of one year between annual meetings.

Committees were not neglected. The minimum were Membership, Nominations and Elections, Placement and Activities. To these ultimately were added committees on Armed Services, Annual Meeting, Constitutional Revision, Credentials, the Lawyer and the Community, Legal Aid, Legal Ethics, Moot Court, Panel Discussions, Planning, Publications and Public Relations.

Director of Law Student Program Is Appointed To Insure Continuity

Because of the turnover of law students in a relatively short period of time, it was obvious that something should be done to provide continuity. With this in mind, the American Bar Association established the office of Director, Law Student Program, to be filled by a young lawyer having a vital interest in the work.

Membership was composed of affiliated law student groups in the various approved law schools rather than of individual students. No financial obligations were incurred by an affiliated local group nor was their autonomy to be interfered with in any way. The prerequisites for membership were that the local group believe in and support the objectives of the American Law Student Association, that it be representative of its law school student body, and that it participate in the circuit and national meetings. In this way it would be possible for maximum benefits to accrue to the individual students.

Just what was this machinery supposed to accomplish? The established objectives were lofty, being encompassed by the organization's motto:

> Created for and dedicated to introducing law students to the professional problems they will face upon admission to the bar, providing a closer integration between the future lawyers and the present-day leaders of the legal profession, promoting the idea of professional responsibility, and acquainting law students with the opportunities and obligations present for improving the administration of justice through the organized bar.

In everyday phraseology this merely meant that the law students, through their own organization, were extending themselves a helping hand in traversing the gap between law school and the actual practice of law. They were being given the opportunity to become members of the legal profession upon their admission to the study of law. Here was a chance to work with the first of many bar associations to which a lawyer belongs during his career, a chance to acquire contacts and experience invaluable to the later practice of law.

What did the legal profession think of this new organization? Dean Erwin Griswold of Harvard Law School said that there ought to be a chapter of the American Law Student Association in every school recognized by the American Bar Association. Professor Kenneth R. Redden, in a *Journal of Legal Education* article entitled "Extracurricular Activities—The Ugly Duckling",[9] viewed the new organization as a happy merger of the wisdom and experience of the older members of the profession with the energy and ideas of young law students. *The Young Lawyer*,[10] published by the Junior Bar Conference, editorially anticipated unlimited advantages to the legal profession. The AMERICAN BAR ASSOCIATION JOURNAL[11] was sure that the students would acquire sound doctrine as to professional ideals and the public obligations of lawyers, plus experience worth a pound of later learning.

This optimistic attitude did not prevail everywhere. There were those who pointed to similar past attempts which had flared up briefly and died. Others questioned the value of such an activity, either to the law student or to the legal profession. These views were not without foundation, for an organization with the lofty objectives previously described is not easily brought to healthy life. Many a dream vanishes upon the drawing board or, if it survives that stage, fails to pass the initial tests.

Association Has Survived Its Planning Stage

Whatever the hopes and fears when the American Law Student Association was planned, that organization has survived the planning stage. It has passed through a test period of more than two years, two years of organization and work by which its value and future can be judged.

One of the activities of special importance has been the circuit conferences held each spring. These were established to provide discussion and solution of local problems, to establish close relations between the law schools of an area, to permit participation by students who might be unable to attend the annual meetings, and to furnish a foundation for national cohesive action. Conferences have been held in such widely separated places as Albuquerque, Chicago, Columbus, Dallas, Des Moines, Denver, Ithaca, Nashville, Newark, New York City, Philadelphia and St. Louis.

These circuit conferences are not merely social affairs. Practicing lawyers are invited to give the benefit of their experiences since leaving law school. Local bar associations in some cases furnish facilities and usually send representatives to answer questions of students. But the

(Continued on page 441)

9. 2 Journ. Legal Educ. 196, number 5 (1949).
10. 5 *The Young Lawyer* 2 (April, 1949).
11. 35 A.B.A.J. 316; April, 1949.

Once in GATT, Always in GATT:

The Complications of Complexity

by Edwin G. Martin • of the District of Columbia Bar

■ The word "GATT" is not so mysterious as it looks—it stands for "General Agreement on Tariffs and Trade", an agreement between the United States and China granting tariff concessions to the Nationalist Government. That, however, is the only simple thing on the following pages. Mr. Martin explains the story—the provisions of the GATT that was put into force, then terminated to the extent that it would be applied as though it had been terminated, then partly restored because someone described the wrong chicken. Mr. Martin is a student of the complexities of tariff law, and pokes some fun at the obscurantism which shrouds the field. Despite its humorous style, the article is a serious criticism of what appears to be a departure from our historic concepts of fair play.

■ "It might as well be written in Chinese, for I can't understand it in English." So spoke one knowledgeable official of the President's Proclamation of May 4, 1948, putting into force the tariff concessions granted by the United States to China in the General Agreement on Tariffs and Trade (GATT).[1]

He was not criticizing the trade agreements program. Far from it. He was an advocate of the program and was criticizing the legal document by which our tariff is actually reduced. He thought such documents should be drafted in understandable language.

But GATT is itself so very complex that it is forlorn to hope that proclamations to carry it out could be simple. Even Philadelphia lawyers must be endowed with more-than-usual perspicacity, perception and patience if they are to undertake deciphering these precepts with any hope of success.

Fortunately, there are two or three experts in the Government who have a good understanding of the structure and significance of these proclamations. It is only after checking my tentative conclusions with one of them that I make bold to commit them to print.

My research has suggested the existence of a GATT law, possibly parallel to Newton's law of gravity, to the effect that, once we have made a tariff concession under GATT, that concession has permanent life. There may be periods of suspended animation, induced by political events of the hour, but when the President deems events propitious he restores the concession to vitality by executive fiat—by a proclamation that might just as well be written in Chinese.

The proclamation of May 4, 1948, put the Chinese concessions into force with the following words: "Effective on and after May 22, 1948, the concessions provided for in part I of said schedule XX which are identified in the 6th recital of this proclamation shall no longer be identified in the 8th recital of said proclamation of December 16, 1947, and the rates of duty representing such concessions identified in said 6th recital of this proclamation shall be applied, subject to the applicable terms, conditions, and qualifications set forth in said schedule XX, and parts I, II, and III, of said general agreement, and in subdivision (a), other than exception (I) thereof, of said proclamation of December 16, 1947, including in each case any amendments and rectifications which have been proclaimed by the President, to articles of the kinds provided for in the descriptions of products in the column at the left of said rates".[2] Simple, isn't it? But, comprehensible or not, these magic words put the concessions into force.

Chinese Communists Choose to Ignore GATT

Probably endowed with, among other things, a nefarious wish to disrupt the harmonious relations existing under GATT, the Chinese Communists usurped control over the mainland of China. They thumbed their noses at the international obligations undertaken by the Nation-

1. 61 Stat., Part 5 (1947).
2. 62 Stat. 1509 (1948).

Hessler

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alist Government, including GATT. They assessed higher rates of duty than GATT prescribed and were otherwise very bad boys.

Our Government began in 1949 to consider what, if any, steps it should take. It noted that GATT defined a "contracting party" as a country which was applying the concessions it had negotiated and that concessions granted to a country which ceased to be a contracting party might be withheld or withdrawn.

Well, the Communists controlled all of the mainland of China and over 90 per cent of the population. They were flagrantly ignoring GATT. On the other hand, the Nationalists on Formosa continued to apply GATT. Was "China" still a contracting party to the agreement or not? Should we withdraw the concessions —which incidentally would mean increasing some tariff rates? What a dilemma!

Whether unconsciously or by design, the Nationalists made a gesture to take our officialdom off the hook. In March, 1950, they notified the Secretary-General of the United Nations that they were withdrawing from GATT.

Since we recognized the Nationalists as the legitimate government, their withdrawal meant, to us, that we could in turn withdraw the concessions that we had granted China.

Of course, there were a few complications. For one thing, the British and some other members of GATT had recognized the Communist government, so that in their legal view the Nationalists were without power to withdraw from GATT and the March action was a nullity.

Disregarding our difference with the British, our Government resolutely (though slowly) proceeded with steps to withdraw the concessions. It must have been painful to those who regard any increase in tariffs as akin to original sin. In accord with GATT we notified all the other countries of our intentions and consulted with them on the problems. In several cases, they objected to our withdrawal of particular concessions and we acceded to their wishes, permitting the reduced rates to continue.

Concessions Are Withdrawn in Autumn of 1950

However, with respect to a significant number of products, the Administration finally determined to withdraw the concessions and gave public notice of that intention on September 13, 1950.

A month later, the President issued his proclamation which, after seven legal-size pages of recitals, ordained: "The said proclamation of December 16, 1947, as amended and rectified, and the said proclamations supplemental thereto referred to in the second recital of this proclamation are hereby terminated to the extent that, on and after the sixtieth day following the date of this proclamation they shall be applied as though the items and parts of items identified in the sixth recital of this proclamation were deleted from Part I of Schedule XX of the said General Agreement."[3]

Here the fine hand of the Department of Justice shows up. Notice the article "the" before "said"—a notable improvement in grammatical structure, so conspicuously missing from the proclamation of May 4, 1948.

Notice also, that the proclamation did *not* say it was withdrawing or deleting the items from Schedule XX. It merely terminated in part the earlier proclamations so that they would be applied *as though* the items were deleted. At least, the proclamation did not seem as clear on the subject of withdrawal as it should have been.

This ambiguity suggested the question of whether the withdrawal was intended to be temporary or permanent. It created a suspicion that the Administration might intend to restore the concessions should the political climate *vis-à-vis* the Communists change for the better. The proclamation predated Chinese intervention in Korea. It has been since disclosed (in the Jessup hearings) that the Administration was "considering" recognition of the Chinese Communists.

This suspicion was presented to the Trade Agreements organization during discussions on behalf of a United States industry that needed increased tariff protection on one of the products involved. The industry asked that the doubt be resolved by a clear withdrawal of the concession, thinking that this would at least guarantee it a public hearing before the concession could be restored.

The Government's spokesman pooh-poohed the suspicion. He said the concessions had definitely been withdrawn from GATT and couldn't be restored except by the normal process which includes public notice and hearing. The industry was denied its request.

Another industry whose rate structure had been distorted by withdrawal of one concession without any adjustment of closely related concessions asked for relief. It asked that the original concession be restored, or that the related concessions be adjusted in line with the

3. 15 Fed. Reg. 6984 (1950).

withdrawal. The official spokesman for the Government informally said after study of the matter that the original concession could not legally be restored without public notice and hearing, which was not feasible. This industry, too, was denied relief.

Concessions Were Withdrawn Without Notice or Hearing

Imagine their surprise when, a year later (on November 26, 1951), the President restored one of the concessions that had been withdrawn; and he did so without any notice or hearing. The given reason was that the concession had been inadvertently withdrawn.

During the consultations with other countries on the original withdrawal (which took place sometime between March and mid-September, 1950), one of the other countries had objected to withdrawal of the concession on a particular type of dressed chicken. In his proclamation, the President described the wrong chicken, so that the rate on the kind in which our foreign friend was interested reverted to the level fixed in the Hawley-Smoot Tariff Act[4]—which rate was twice that specified in GATT.

Our Government naturally was anxious to make amends, even though the original GATT concession had not been initially negotiated with the country asking for its restoration.

The two separated paragraphs which need to be quoted for a clear comprehension of the proclamation of November 26, 1951, are as follows: "6. WHEREAS, in the sixth recital of the said proclamation of October 12, 1950, specified in the second recital of this proclamation, the concession on 'whole chicken packed in air-tight containers' was excepted from the identification as to the second item 712 in Part I of Schedule XX (original) of the said General Agreement specified in the first recital of this proclamation, through a misunderstanding as to the product in which another contracting party to the General Agreement had expressed a substantial interest in the course of consultation pursuant to the said Article XXVII set forth in the fourth recital of this proclamation, and I determine that it will be required or appropriate to carry out the said trade agreement that the concession with respect to the following products provided for in the said second item 712, in which such other contracting party has expressed an interest, be applied after the close of business January 25, 1952. 'Chickens, prepared by removal of the feathers, heads, and all or part of the viscera, with or without removal of the feet, but not cooked or divided into portions'; . . . Part II To the end that the said trade agreement specified in the first recital of this proclamation may be carried out: (a) Effective after the close of business January 25, 1952 the rate provided for in the second item 712 of Part I of Schedule XX (original) of the said General Agreement shall be applied to the products in that part of the said item 712 described at the end of the sixth recital of this proclamation."[5] *Voilà!* Clear as crystal!

There may have been some changes in official thinking regarding the possibility of restoring concessions by executive fiat since denial of the requests of domestic industries as referred to above. Or the particular officials (not lawyers) may not have known whereof they spoke. Or there may be different rules for playing the game, depending on the players. At any rate, the recent action does seem to say that withdrawal of concessions does not mean withdrawal.

The foregoing (including dates) might warrant reassertion of the ancient wheeze: "The mills of God grind slowly, yet they grind exceeding small"—at least when our foreign friends are the miller's customers.

4. 46 Stat. 590, 632 (1930).
5. 16 Fed. Reg. 11945-6 (1951).

Board of Governors Takes Important Action

■ The Board of Governors of the Association, meeting prior to the Mid-Year Meeting of the House of Delegates, took action on many administrative and policy problems of the Association. Some of these are so important that they deserve to be brought to the attention of the membership of the Association at large.

The Board authorized the President to appoint a Special Committee on Model Grievance and Disciplinary Procedures. The purposes of this new Committee are explained by President Barkdull on page 402 of this issue.

The Board chose the City of Boston as the site of the 1953 Annual Meeting. The dates have been tentatively set for August 24-28.

Acting because of the increasing number of requests from Sections and Committees for authority to solicit contributions and funds from sources outside the Association, the Board amplified the declaration of policy on this subject, adopting the following additional regulations:

1. The prior approval of the Board of Governors of the Association shall be obtained before any solicitation or acceptance of funds from sources outside the Association for any project of the Association or any Section, Committee or group thereof.

2. In determining the advisability of permitting such solicitation, it shall be the policy of the Board of Governors to limit solicitation to those projects clearly within the purposes of the Association and in which projects the Bar has a special interest or responsibility; and where the projects are not of such nature but are within the interest or responsibility of other groups or professions or the citizenry as a whole, the Association should not accept the responsibility of administration of funds from outside sources.

State Delegates Nominate Four

To Fill Important Association Offices

■ At the Mid-Year Meeting of the House of Delegates, the State Delegates nominated David F. Maxwell, of Pennsylvania, for the post of Chairman of the House of Delegates for a two-year term beginning at the adjournment of the 1952 Annual Meeting. P. Warren Green, of Delaware, LeDoux R. Provosty, of Louisiana, and A. L. Merrill, of Idaho, were nominated for three-year terms on the Board of Governors from the Third, Fifth and Ninth Circuits respectively. Nomination is generally considered tantamount to election.

Mr. Maxwell was born in Philadelphia in 1900 and received his preparatory education in the Philadelphia public schools, being graduated from Frankford High School in 1917. He was graduated from the Wharton School at the University of Pennsylvania in 1921 and from the University of Pennsylvania Law School in 1924. He was an editor of the *University of Pennsylvania Law Review* for two years.

Admitted to the Pennsylvania Bar in 1924, he began his career as an associate of the Philadelphia firm in which he is now the third-ranking partner.

He has served as Chairman of the Unauthorized Practice of Law Committees of the Philadelphia and Pennsylvania Bar Associations, has been a member of the Board of Governors of the Philadelphia Bar Association and is presently a member of the Executive Committee of his state bar association.

He joined the American Bar Association in 1934 and has been one of its most indefatigable workers. He was a member of its Committee on Unauthorized Practice of the Law from 1941 to 1946 and Chairman of that Committee from 1943. He has been Pennsylvania's State Delegate since 1944 and has served on the Committees on Resolutions, Ways and Means and Co-ordination of Bar Activities. He is presently Chairman of the Committee on Rules and Calendar and a member of the National Conference of Lawyers and Representatives of the American Bankers Association, Trust Division, and has been a member of the National Conference of Realtors and Lawyers, the National Conference of Lawyers and Adjusters, the National Conference of Lawyers and Life Underwriters and has been Co-Chairman of the National Conference of Lawyers and Certified Public Accountants.

Among his other activities, he is a member of the Kiwanis Club of Philadelphia and was its President in 1951. He is a Counsellor of St. Andrew's Society of Philadelphia and a member of the Union League and Germantown Cricket Clubs. A Mason, he is Past Master of Progress Lodge No. 609, F. & A. M. He is a member of the Church of the Good Shepherd.

Mr. Maxwell is married and has two children.

Phillips Studio

DAVID F. MAXWELL

Judge P. Warren Green, the nominee for membership on the Board of Governors for the Third Circuit, was born in Pennsylvania in 1889. He attended public schools in Wilmington, Delaware, and was graduated from the Wilmington High School in 1907. He received the degree of B. E. in Econ. from the Wharton School of Finance and Commerce in 1911 and an M. A. degree from the University of Pennsylvania in 1912. He began his career as an instructor in finance at the Wharton School (1911-1912) and as Assistant Professor in Finance and Transportation at Washington State College, Pullman, Washington (1912-1913).

He read law with William S. Hilles, of Wilmington, and was admitted to the Delaware Bar in 1916. He was Deputy Attorney General of the State of Delaware from 1917 to 1919, and Chief Deputy Attorney General from 1919 to 1921. He became Assistant City Solicitor for Wilmington in 1921. In 1933, he was appointed Attorney General of the State and was elected to the post for a four-year term in 1934. He was appointed Chief Coun-

P. WARREN GREEN

LeDOUX R. PROVOSTY

A. L. MERRILL

sel for the Legislature of Delaware in 1939 and was made Judge of the Court of Common Pleas for New Castle County in 1943 for a term of twelve years.

During World War I, he was a Government appeal agent and in World War II he was Chairman of the War Work Committee for Delaware, a post he also holds in the present Korean War.

He is a member of the Delaware State Bar Association and of the House of Delegates of the American Bar Association. He is a contributor to several magazines and serves on the Board of Directors of the Interstate Commission on Crime and the Conference Committee on State Defense. A Methodist, he is a member of the Sons of the American Revolution, the Swedish Colonial Society of Delaware, the Kiwanis Club and various Masonic bodies.

LeDoux R. Provosty was born in New Roads, Louisiana, in 1894. He received his preparatory education in public schools, at Poydras Academy and Spring Hill College, which awarded him a B. A. degree in 1914. He received his legal training at Tulane, and was graduated in 1920 with the degree of LL. B. He is a member of Phi Delta Phi and of the Order of the Coif.

He has been a member of the Council of the Louisiana State Law Institute since 1942 and was its Vice President in 1951.

Mr. Provosty is a member of the Alexandria, Louisiana State and American Bar Associations, and was President of the state association in 1942. He has been a member of the House of Delegates of our Association since 1945.

He is the senior partner of his firm in Alexandria.

A. L. Merrill was born in Utah in 1886 and attended the public schools of Richmond, Utah. Receiving his B. A. degree from the Brigham Young College (Logan, Utah) in 1909, he entered Harvard Law School in September of that year.

Admitted to the Idaho Bar after being graduated from Harvard in 1912, he began his practice in Pocatello, where he is now the senior partner of his firm.

Mr. Merrill served for three years as Commissioner of the Idaho State Bar Association and is a past President of that organization. He has been State Delegate from Idaho in the House of Delegates of the American Bar Association for the last ten years.

A member of the Uniform State Laws Commission for Idaho and of the American Law Institute, he has been active in civic, political and business affairs.

He married Miss Gladys Garr in 1916. They have four children. Mr. Merrill's younger son, Wesley F. Merrill, is one of his father's law partners.

As reported in the April issue of the JOURNAL (at pages 296-297), the State Delegates nominated Robert G. Storey, of Texas, for the office of President of the Association, and nominated Joseph D. Stecher, of Ohio, and Harold H. Bredell, of Indiana, to succeed themselves as Secretary and Treasurer respectively.

Law Books of Tomorrow:

A Complete Library on a Five-Foot Shelf

by Sidney Teiser • of the Oregon Bar (Portland)

■ Books are the tools of the lawyer's profession. Without them he cannot serve his clients, plead his cases or earn his living. Books are also a problem, as courts and administrative bodies pour out more decisions and rulings and opinions each day and Congress and the state legislatures each session pass more statutes about which the courts and administrative bodies will have to pour out more decisions and rulings and opinions which will be printed in more and more volumes. The problem of finding room for the hundreds of law books that the lawyer needs to conduct his practice is not a small one. By this time next year, that problem may have been solved. Mr. Teiser writes of the law books which you may be using in a few months or a few years. For example, you may have a complete set of State Reports on your desk, in the form of microfilm cards, which will be cheaper, easier to handle and easier to read than the bulky volumes that are now in need of dusting on the shelves of your law library.

■ In anticipation of the publication of law books in microscopic size by one or more of the leading law book publishers—and an announcement to this effect is not too far distant—it is deemed timely to discuss the process and extent of this revolutionary step. It is interesting to note that since the beginning of history there has been a definite trend towards the achievement of reproducing in less and less bulky form laws and treatises on law. This new development of microreproduction of law books takes a progressive leap in the accomplishment of the objective.

Since an understanding of the background of law publishing is desirable to obtain a proper appreciation of the progress in this field, a cursory survey of the law publications of the past will first be undertaken.

Earliest "Law Books" Were Clay Slabs

The earliest known law publication in the world is a slab of baked clay about a foot and a half square. On it is inscribed in archaic language the laws of the Sumerians, an ancient people who occupied the southern part of the Tigris-Euphrates Valley of Babylonia.[1] This publication appeared more than four thousand years ago (*circa* 2400 B.C.) and is the oldest code-text thus far discovered.

About one hundred and fifty years later (*circa* 2250 B.C.), in the reign of the great king Hammurabi, the laws of the Babylonians were codified and transcribed in cuneiform characters on a pillar of stone eight feet high, seven feet in circumference and two feet in diameter.[2] These laws, as indicated in a pictorial prefix to the text, were delivered to Hammurabi by the sun-god Shamash. Wigmore states that the Code of Hammurabi is "the earliest national code in the world", and that its "provisions range over nearly the whole scope of law—crime, family, property, commerce".[3] The original stele of Hammurabi is housed in the Louvre Museum and a replica of it is on display at the Law School of Northwestern University.

About fifteen hundred years later another momentous legal publication was presented to the world, again on stone, and this time too it was ascribed to divine origin. The biblical tradition is that the Ten Commandments were revealed to Moses after he had remained on Mt. Sinai for forty days. When he came down with the Tablets of the Law to present them to the people of Israel, he found the people, so the tradition continues, worshipping strange gods. In indignation Moses shattered the Tablets and proceeded

1. *The Cambridge History*, Volume 1, page 461; Charles Foster Kent, *Israel's Laws and Legal Precedents*, page 4; Leonard W. King, *A History of the Sumer and Akkad*, page 184; John Henry Wigmore, *A Panorama of the World's Legal Systems*, Volume 1, page 84.

2. Leonard W. King, *History of Egypt*, pages 266-298; R. W. Rogers, *History of Babylonia and Assyria*, Volume 2, page 86; Charles Foster Kent, *Israel's Laws and Legal Precedents*, pages 4 and 5. For original text and translation, see Robert Francis Harper, *Code of Hammurabi*.

3. Wigmore, *A Panorama of the World's Legal Systems*, Volume 1, page 84.

to discipline the people. After they had fully expiated their wrongdoings, he was summoned again to the mountain top where he was given by the Deity another copy, similarly transcribed on two tablets of stone. Moses brought this second edition of the Decalogue down to the people, who accepted it as their code of laws and entered into a covenant with the Deity to observe it. Thereupon the stones were placed in the Ark of the Covenant.[4] Expanded from the Decalogue into a rather pervasive and minute system of laws and regulations, they became the Five Books of Moses, or Pentateuch, of the Bible.

Other law productions followed from time to time throughout the centuries—the emanations of early civilizations.

The Chinese have given us, as their first law publication, Chow Li (Regulations of Chow). The Hindus have published their Laws of Manu; the Greeks their Laws of Gortyna; the Romans their Twelve Tablets; the Japanese their Seventeen Maxims of Shotoku; the Arabians or Mohammedans their Sayings of Mohammed; the Celts, their Judgments of Caratnia; the Roman Empire its Code of Justinian; and the English, their Year Books. This list of first publications is not complete, but illustrates the issuance of various first editions, so to speak.

As has been noted the first three great legal publications of the ancients were on durable, if bulky, material—baked clay and stone. The Chinese Regulations of Chow were on bamboo, while the Hindu's Laws of Manu were inscribed on strips of birchbark. The Twelve Tablets of the Romans were probably engraved on bronze. However, when we reach medieval times we find the English Year Books were at first produced (*circa* A.D. 1250) on parchment. The earliest of these reports were written by hand in contracted law-French some two hundred or more years before the advent of printing.

Since we are more particularly concerned with English law, a brief description of the Year Books may not be amiss. They give us, for the period during which they were published, an account of the activities and decisions of the King's courts compiled by eye-witnesses of the events, or gathered from narrations by eye-witnesses. They make available to us a panorama of the development of the common law through a recording of the occurrences happening in the courts day by day against a back-drop of the customs and habits of the people appearing before these courts in their litigations and the judges and lawyers involved. They constitute not only a history of English law but also a segment of English life.[5]

The production of movable type by Johann Gutenberg, in 1450, was in fact the inventing of printing, since it converted a skill into an industry, and brought it into the practical field. It constituted one of the greatest and most far-reaching advances in the cultural and material progress of mankind. It made possible the dissemination of the thoughts, aspirations and accomlishments of the past for the benefit of the present. And it enabled the ideas, ideals and deeds of the present to be preserved and disseminated for the benefit of the future. It permitted the widest distribution from one end of the earth to the other, of a people's knowledge, wisdom and activities.

Only a short time elapsed after the advent of Gutenberg's invention before there began to be reproduced through the printing process the classics of religion, of philosophy, of science, of literature and of law. Men were encouraged to transfer their thoughts into written words by the knowledge that such words might be given wide distribution.

In the sphere of English law, for example, this new process opened to man's wider knowledge the fundamentals of legal thought. Bracton's *De Legibus Angliae*[6] which then existed only in manuscript form, and the Year Books, which then too were in that form only, were vitalized by print.

However, before the appearance in print of Bracton's *De Legibus* or of the Year Books, there was published in 1481 the famous classic of the law, Chief Justice Thomas Littleton's *Tenures*,[7] the first English law book ever printed.[8]

Sir John Fortescue's *De Laudibus Legnum*,[9] written before Littleton's *Tenures* was published some fifty years afterwards (1537).[10]

The first printed volume of Sir Edward Coke's *Institutes* appeared in 1628, and more than a century later, in 1765, Sir William Blackstone's *Commentaries* were published, a landmark in literature as well as law.[11]

Kent and Story Are American Contributions

In the United States two particularly great classics followed the pattern of Blackstone's *Commentaries;* namely, Chancellor James Kent's *Commentaries on American Law* and Joseph Story's *Commentaries*. The former first appeared in print in 1826 and the latter in 1833.

As the craft and industry of printing developed, so too did the publication of law books. Law reports, annotated and unannotated, textbooks, encyclopedias of law, digests, loose-

4. See Julian Morgenstein's account in the *Universal Jewish Encyclopedia*, Volume 3, page 506—"Decalogue".

5. For a most interesting article on the Year Books, see W. S. Holdsworth, "The Year Books", 22 L. Q. Rev. (London) 266-284; 360-382.

6. The first printed edition of Bracton's work appeared in 1557, *Dictionary of National Biography*, Volume VI, page 146.

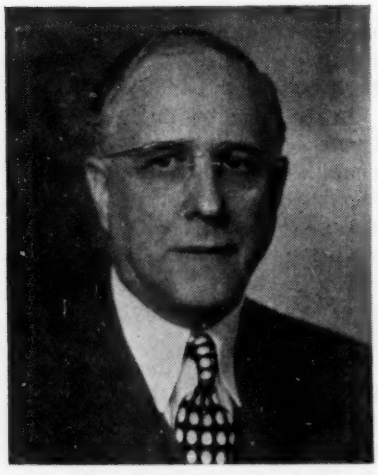
7. *Dictionary of National Biography*, Vol. XXXIII, page 347, where it appears that the date 1481 is conjectural. See also this article for dates and accounts of subsequent publications.

8. John Henry Wigmore, *A Panorama of World's Legal Systems*, Volume III, page 1078.

9. *De Laudibus* was written by Fortescue for the instruction of Edward Prince of Wales while he was in exile in Berry with his mother, Queen Margaret, into which exile Fortescue accompanied them. Four subsequent editions were printed in the sixteenth century, five in the seventeenth, four in the eighteenth, and one in the nineteenth. See *Dictionary of National Biography*, Volume XX, page 45.

10. *Dictionary of National Biography*, Volume XX, pages 242-243, some twenty editions of the *Institutes* have been issued in England, several editions and abridgments have appeared in America.

11. Lewis C. Warden, *The Life of Blackstone*, pages 2-57. There have been seventy complete editions published in English, fifty-six in French, eleven in German and nine in Italian. *Ibid.*, page 270, *Ibid.*, page 410.



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leaf compendia, law journals, make available to every lawyer and judge, every teacher and student the great mass of adjudicated cases and the work of authoritative (and not so authoritative) writers and compilers. Moreover, through the improvement of printing presses, of type-setting mechanism and the quality of paper and inks, single-volume lawbooks which were formerly held down to an average length of less than five hundred pages now contain as many as fifteen hundred to two thousand pages.

But as in all other phases of human endeavor, improvements and innovations have brought problems and complications. Whereas formerly there were too few law books, now there are too many. Law offices are frequently pressed for space to house their law books. Law libraries, in the law schools and elsewhere, are continually confronted with the problem of how to acquire sufficient space for stacks on which to shelve their volumes. And often when such stacks are obtained they are located at some distance from the space devoted to reading the books kept in such stacks. (This, obviously, is also true of other than law libraries.)

The cost of the acquisition and maintenance of a minimum workable library, not to mention an adequate or extensive one, is almost prohibitive. Some have sought to alleviate the situation in part by proposing that judges write shorter opinions, or in some instances no opinions at all. Some have suggested that only carefully screened opinions be printed and that other opinions merely be filed in manuscript form. It has been thought that this might lessen the amount of matter required to be printed in the reports. But at best such a proposal would only be a temporary expedient, if adopted, and would have slight effect upon the over-all picture.

For a time no real or adequate answer to the problem seemed forthcoming. But necessity produces remedies, since, as has been said, it is the mother of invention.

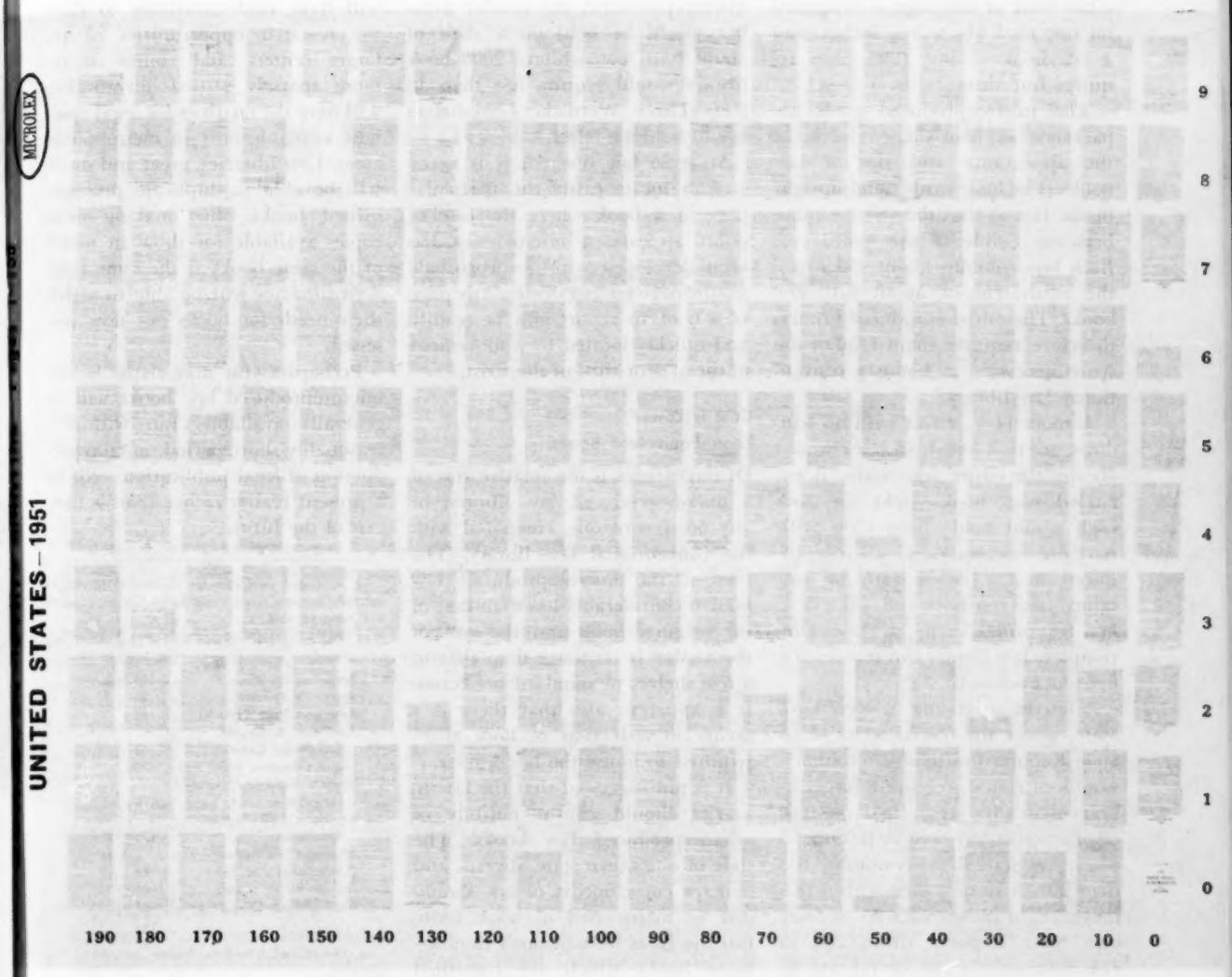
Law Book of Tomorrow Will Be Microproduced

And so we come to consideration of the process of microreproduction and the development of the law book of the future. Microreproduction is the process—or a refinement of it—that the President of the Rockefeller Foundation called, in making his report to the Foundation in 1941, "perhaps the most fundamental advance in duplicating the printed or written word since Gutenberg". It is the process of photographing in a greatly reduced size a printed or written page or sheet and then developing that reduced image either on another film or on paper. The extent of the reduction is a matter of convenience or of expediency—at least to a certain point. The usual range of reduction is from fourteen to twenty-four times. Reduction at twenty-four times will enable the reproduction of about 300 pages of an ordinary-size law book page on a card 5 x 7 inches, whereas 200 pages can be reproduced at an eighteen times reduction on a card 6½ x 8½ inches.

The micro-law book will consist of a paper card about 6½ x 8½ inches, or of several cards—since one card (both sides) will contain "only" four hundred pages. It will not be a film, either rolled or flat. Thus produced in micro form, a thousand-volume law library of ordinary-size books can be placed on one's desk between bookends.

Books are valuable only if they

The Microlex Viewer



The microcard above is the equivalent of a two-hundred page book. The card is reproduced here in its actual size, and would be read with the Microlex Viewer, pictured at the left. It is expected that books "printed" by this process will be cheaper than conventional volumes.

can readily and conveniently be read. Therefore, facility of handling and reading becomes a *sine qua non*.

The reading of microimages is accomplished through the medium of a reader or viewer, utilizing to a great extent the principle of the magic lantern, now of ancient memory, or of the more modern motion-picture projector. But instead of throwing the image much enlarged on a distant screen or wall as in the magic lantern or the projector, the image is produced on the front of the reader itself, which constitutes the viewing or reading screen. The science of optics is brought into play for this purpose. The tableviewer, now being developed, is no larger than a typewriter, and the image is transferred from the microcard—easily placed in the viewer—to a self-contained glass or plastic screen. The magnified image of the micro-reduced page thus appears on the screen of the viewer in larger type than that appearing on the original page of the law book. The viewer, which is portable, can be placed on a desk or small table.

The original page of an ordinary law book is actually about 5½ x 9 inches, and when magnified by the viewer, appears as a 9 x 14 inch page. Unlike the old magic lantern where the enlarged image required a dark or darkened room for satisfactory viewing, the microviewer enables one to read the page in ordinary light.

Three Cards Equal 1200 Pages

As previously indicated, the size of each card is approximately 6½x8½ inches, allowing for proper margins and for the designation of the title of the book and the number of the volume in type readily visible to the naked eye. Such a card contains 200 pages of printed matter on each side, or 400 pages on both. Thus

a law book of 400 pages is contained on one card 6½ x 8½ inches—and a law book of, say, 1200 pages requires but three cards.

The microreproduced cards are packaged in book-shaped boxes of the appearance and size of law books. The loose cards stand upright in the box so that the volume numbers are visible to the naked eye. Each box contains about 150 cards, the equivalent of about fifty law books. The microreproduced library, therefore, requires about 1/50 of the space necessary to house a conventional law library.

A room 14 x 14 feet with no windows, so that the bookcases would occupy the entire four walls, if encircled with book stacks six cases high would hold about 1500 ordinary-size law books. If microreproduced, such a library could be contained between book ends on a desk five feet wide. Verily, a reasonably complete law library can repose on a five-foot bookshelf.

A lawyer practicing in New York State, where the official series of its State Reports consists of 775 volumes, would, of course, require a larger library than a lawyer in the same type of practice in Vermont or in Oregon where the State Reports number less than 200. A library then within this range might consist of a set of one's own State Reports (from 200 to 775 volumes), a set of reports of the Supreme Court of the United States (the official edition contains 342 volumes, the Lawyers Edition only 96), a set of law encyclopedias[12] (from 60 to 100 volumes), a set of Annotated Reports, or a selected portion of them,[13] of from 250 to 600 volumes, or a selected section of the National Reporter System,[14] an Annotated United States Code (say of from 10 to 70 volumes), and a group of well-chosen textbooks (about 50 books). The total would be between 800 and 2000 volumes. Microreproduced, the smaller number would be held on a shelf of about four feet, while a 2000 book library would require less than 10 feet. Three Wernicke bookshelves would hold the latter.

Since in law research it is necessary to locate easily the particular page of a book where the case or point appears, a microviewer has been developed with a surprisingly simple page-finding device. Any page of a book or report may be readily and quickly located by a movement of the arm or turn of the wrist.

Cost Is Lower Than Equivalent Books

Of importance is the relative cost of a microreproduced law library, or any portion of one, compared with the conventional law library. The cost of the microreproduced law book is considerably less than that of the original book and the cost of the viewer is no more than that of a few shelves of standard bookcases. It is apparent also that there is a saving in reduction of floor space required to house the law library.

It is not suggested that the law libraries should consist entirely of microreproduced law books. The code of one's own state, digests, and perhaps encyclopedia of law should still be maintained in book form. But the great bulk of one's library—those books which are consulted with less frequency than the code, such as Reports (annotated and unannotated, state and federal), textbooks, law periodicals and the like, undoubtedly will be desirable.

Thus we have a preview of the law book of the future and of the law library of the future. That microreproductions will be a boon to the larger law offices, with their problem of space, appears obvious. That it will also afford economies to the smaller law offices likewise seems unquestionable. Small communities will have made available to them the research opportunities of the larger centers, and courts in the more sparsely settled jurisdictions will have the facilities for legal study now available only in metropolitan areas. Law libraries, great and small, will be able to duplicate presently owned books, thus making more copies available for those in search of the same books at the same time. And libraries will be able to satisfy their needs for books not now possessed.

Perhaps a year may elapse before microreproduced law books will be generally available. But within a reasonably short period, microreproduction of legal publications will be a present reality rather than a forecast of the future.

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12. *American Jurisprudence* consists of fifty-eight volumes, while *Corpus Juris Secundum* may reach one hundred volumes.

13. The annotated Report Series consists of the following:

American Decisions	100	volumes
American Reports	60	"
American State Reports	140	"
American & English Annotated Cases	53	"
Lawyers Reports Annotated	70	"
Lawyers Reports Annotated New Series	76	"
American Law Reports Annotated	175	"
American Law Reports Annotated (2d Ser.)	20	"
English Ruling Cases	26	"
British Ruling Cases	16	"
	736	"

14. The National Reporter System consists of the following:

Atlantic Reporter	200	volumes
Atlantic Reporter (2d)	82	"
Northeastern Reporter	200	"
Northeastern Reporter (2d)	99	"
Northwestern Reporter	300	"
Northwestern Reporter (2d)	48	"
Pacific Reporter	300	"
Pacific Reporter (2d)	232	"
Southeastern Reporter	200	"
Southeastern Reporter (2d)	65	"
Southern Reporter	200	"
Southern Reporter (2d)	53	"
Southwestern Reporter	300	"
Southwestern Reporter (2d)	240	"
New York Supplement	300	"
New York Supplement (2d)	104	"
Federal Reporter	300	"
Federal Reporter (2d)	190	"
Federal Supplement	98	"
Federal Rules Decisions	10	"
Supreme Court Reporter	72	"

The Outlook for the Lawyer Referral Service:

Re-examination and Revitalization

by **Theodore Voorhees** • Chairman of the Committee on Lawyer Referral Service

■ This is the second of two articles on the Association's current effort to secure the adoption of referral plans by local bar associations. In it, the Chairman of the Standing Committee on Lawyer Referral Service reports the results of the National Conference of Referral Services which was held in Chicago on February 23 and discusses the broadening of the Association's program as it was developed at that meeting.

■ In the March issue of the JOURNAL our Committee reported that bar associations in forty-five of the larger cities in the country had adopted referral plans and that clients seeking advice through this medium now numbered around 35,000 per year. While the results are still modest, it was pointed out that many of the reference services were less than a year old and few had been in operation for more than three years. Still, the Committee was far from satisfied with the accomplishment to date and it recognized the need for a re-examination of its whole program and for a determined effort to give it new vitality.

A great opportunity on both scores was provided by the National Conference of Referral Services which was held in Chicago on February 23 and attended by eighty-five lawyers representing thirty-six states and thirty-one of the existing services. Its principal accomplishments were the discussion and approval of a "Code of Basic Principles for the Organization and Operation of a Lawyer Referral Service" and a review of the Association's present and future program on the referral plan.

The Code is intended to serve two purposes. The reference plan is essentially a public service and in addition it involves a myriad of delicate lawyer-client relationships, since in no case is there personal selection of the attorney by the client. There can, therefore, be no room in the service for the slipshod or the second rate. It is vital for every bar association to insist that its plan comply with the Canons of Ethics, that proper records be kept, that fees not be excessive and that there can be no overreaching. Integrity cannot be built into a program by conference or code, but the setting up of standards helps all parties to toe the mark.

In the second place, if you give a lawyer an outline and some forms, it may get him started on an unfamiliar, perhaps adventurous, enterprise. Many of his objections "on principle" may then slide away and with them some of his lethargy. It is hoped that the spelling-out of the details of the referral plan and the providing of a set of model forms will make it easier for bar associations to work up appropriate devices to meet the needs of their respective communities.

First Objective Is Adoption of Service in Larger Cities

Many divergent points of view were represented at the Conference on such matters as how a service should be sponsored, established, financed, operated and publicized. There was general agreement that the Committee should have as its principal objective the establishment of referral services in the sixty-odd cities of more than 100,000 population which have not yet adopted them, and along with that part of its program goes the improvement of the services which are now in operation. There was less agreement on whether the Committee should have as a secondary objective the establishment of plans in smaller communities, but some of the Western states expressed the opinion that there was a real need for such plans within their borders and the Conference instructed the Committee to expand its efforts in that direction.

It scarcely needs to be pointed out that the inhabitants of the large cities are not the only people who are shy of lawyers, fear the cost of legal advice and, when faced with a legal problem, sometimes fail to realize it. The thought was expressed that any community large enough to have a bar association should give consideration to the establishment of a referral system even though in many instances it would be a simple

one. It may well be argued that a person who asks a bar association for the name of a lawyer is entitled to receive it regardless of whether he lives in New York or Iowa City. Furthermore, a panel of ten lawyers receiving two or three referrals a year in a small town may consider their efforts no less important to the development of good will for the legal profession than the corresponding activities of a similar number of lawyers who serve as a small part of the panel in Chicago. The referral plan is essentially a simple device and it can easily be adapted to a large community or small.

The Committee reported its intention to undertake the publication of a new pamphlet bringing all the earlier "manuals" and "guides" up to date. In addition to including the Basic Code and a set of model forms, the pamphlet will contain outlines of plans for large and small communities, advice with regard to publicity and material for use in the presentation of plans at bar association meetings.

The Committee proposes to organize the National Conference of Referral Services on a semipermanent basis. The Conference should prove a strong force in upholding standards and also in the promotion of new services. It has been proposed that it should have some form of emblem comparable to the Blue Cross and Red Feather, and "Red Seal" is under consideration.

It has been recognized that a seven-man committee can no longer bear the full burden of such a broad promotional undertaking as this program is now becoming. In addition to the National Conference, the Committee has set up a group of field representatives in many of the states to work with it in an informal way to secure the adoption of plans within their areas. Many of these men, an incomplete list of whom is set forth at the end of this article, have already stirred local bar associations into action.

In our article in the March issue we noted the cities where services were in actual operation, and to that survey may be added a word about current prospects.

In New England, Connecticut is in the lead, with referral plans under consideration in nearly all the cities which have not yet adopted them. The successful service that has been inaugurated in Boston should lead to the adoption of similar ones in the other large communities of Massachusetts, and interest has already developed in Providence, Rhode Island.

Almost all the larger cities in New York have plans in operation; the same should be true in Pennsylvania by the end of the year. New Jersey is lagging somewhat, though the Committee has received a number of inquiries from that state. There is reason for discouragement over Baltimore and Washington: the former seems to be content with a referral plan which does little more than handle such of the legal aid clientele as can pay a fee, whereas in Washington the Bar has opposed any *bona fide* referral service. Constructive bar leadership, however, may bring a change.

In the South, referral plans should shortly be under way in Miami, Jacksonville, New Orleans and several other cities. Great hopes are centered on Texas and other states of that area where the plan is receiving strong backing from the new Southwestern Legal Center.

In the Middle West, the services are in operation in most of the cities of Ohio, and there has been a lot of activity in Michigan, Wisconsin and Minnesota. Little progress has been made in Indiana and Illinois (outside of Chicago), but it is hoped that the Chicago Conference will give a strong impetus to the program in that whole area. It should be noted particularly that Nebraska is taking a lead in studying the possibilities of the plan in towns of intermediate size.

In the Far West, a state bar association committee has been very active in California which will probably have plans very shortly in every city in the state. Colorado, which has an outstanding service in Denver, is giving study to its possibilities in less populous counties. It is hoped that the Regional Meeting at Yellowstone Park, at which the topic is on the program, will stimulate interest throughout the Northwest.

In concluding, several observations may be made about the outlook in general. No other part of the ambitious public relations program of the American Bar Association bears the promise that is found in the referral plan. That promise, however, can be fulfilled only if New York, Chicago and other bar associations with *unpublicized* plans will let the public in on this great service which the associations have to offer. There can be no question that more publicity would greatly increase the size of the clientele and usefulness of the service, and the Association will continue its efforts to promote the publicizing of the reference plan.

Finally, there is much evidence of willingness on the part of the Bar to give the project a trial. The skepticism and suspicion of a year or two ago seem to be fading and energetic leadership is appearing somewhat more widely than merely here and there. The imagination and co-operation of the whole Bar of the country must be captured now. This is the time and tide.

Committee on Lawyer Referral Service Field Representatives

ALABAMA	T. B. Hill, Montgomery
ARKANSAS	Terrell Marshall, Little Rock
CALIFORNIA	*Clarence B. Runkle, Los Angeles
COLORADO	Milton J. Blake, Denver Terry J. O'Neill, Denver
CONNECTICUT	I. L. Kotler, Bridgeport
DELAWARE	Thomas Cooch, Wilmington
DISTRICT OF COLUMBIA	F. W. Hill, Jr., Washington
FLORIDA	Donald K. Carroll, Jacksonville
GEORGIA	Edward S. White, Atlanta
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ILLINOIS	Walter T. Fisher, Winnetka Charles G. Lind, Chiago
INDIANA	Richard Smith, Indianapolis
IOWA	Ingalls Swisher, Iowa City
KENTUCKY	Edwards M. Quigley, Louisville
LOUISIANA	Harvey H. Posner, Baton Rouge
MASSACHUSETTS	Reginald Heber Smith, Boston *Chester C. Steadman, Boston
MICHIGAN	Laurence D. Smith, Grand Rapids

(Continued on page 418)

Joannes v. *Andrew*:

New Light on Old Litigation

by **Walter P. Armstrong, Jr.** • of the Tennessee Bar (Memphis)

■ George, the Count Joannes, who was born plain "George Jones", was a fabulous mid-nineteenth century figure who acted in Shakespearean drama and made a career of haling his neighbors into court for imagined affronts to his dignity. His litigious tastes were so whetted by his frequent ventures into the courtroom that he proclaimed himself a member of the Bar and acquired an extensive practice, almost exclusively by taking his own cases. This is an account of one of the Count's lawsuits, which began when the Governor of Massachusetts denied owing him $1.93.

■ Since the present writer first began his researches into the life of that fabulous character, "The Count Joannes",[1] there have come into his possession certain original documents[2] which serve to shed considerable light upon one of the many controversial points in that extremely controversial career. Among the thirteen suits instituted by the Count during his sojourn in Boston, one was against John Albion Andrew, then Governor of the Commonwealth of Massachusetts. At least two references to this litigation, seemingly contradictory, appear. The first speaks of "a suit against Governor Andrew for libel";[3] the second quotes the Count himself as referring, in the course of the trial of the case of *Joannes* v. *Greeley*, to a suit "against Gov. Andrew for money had and received, the Governor having received from him subpoena fees but failed to attend the trial".[4] The documents which have now been unearthed, consisting of the original and authentic correspondence of "The Count Joannes" with Governor Andrew and with his attorney, William L. Burt, regarding this suit, establish that these two references are to the same litigation, and that it is a combination of the two types of action.

John Albion Andrew,[5] who served as chief executive of the Commonwealth from 1860 until 1866, was one of the most active advocates of abolition of his day. Prior to his election he was one of the organizers of the Free Soil Party, was largely instrumental in raising funds for the defense of John Brown after his arrest, and headed the Massachusetts delegation to the Republican National Convention which nominated Abraham Lincoln for the Presidency. His endeavors during his term of office resulted in Massachusetts' being the first state to contribute armed troops to the Union cause, the 6th Massachusetts Regiment being the only one to reach Washington before the crucial week of April 19, 1861, during which the city was cut off from the North. He was also primarily responsible for the formation of the 54th Massachusetts Regiment, composed entirely of Negroes. After the war and his service as governor had ended, he labored to establish the Negro in his rights as a citizen, at the same time supporting co-operation between the North and South and a policy of reconstruction without retribution. As a result of these activities, he became one of the most popular citizens of Massachusetts.

On the other hand "The Count Joannes", who had lived for some time in Virginia prior to his return to Boston, was always an ardent supporter of slavery. He had already achieved some notoriety due to the speech which he had made, although not a lawyer, at a meeting held by the Bar at the outbreak of the war to determine whether or not the courts should be closed,[6] and to his suits against the Rev. Bennett,[7] and against Francis H. Underwood[8] and his publisher.[9] In short, he was already well on his way to attaining the position of eminence which he later occupied as one of the most unpopular citizens of Massachusetts.

The Count's attitude towards

1. Which culminated in the article entitled "The Count Joannes: A Vindication of a Much-Maligned Man", 36 *A.B.A.J.* 829; September, 1950.
2. Through the courtesy of Frank W. Grinnell, of the Boston Bar, to whom the author expresses his thanks.
3. Joseph A. Willard, "Half a Century With Judges and Lawyers".
4. *New York Times*, February 16, 1865.
5. The information on Governor Andrew is taken from "Dictionary of American Biography", Volume I, Pages 279-281.
6. Willard, *op. cit.*
7. *Joannes* v. *Bennett*, 87 Mass. (5 Allen), 169, 81 Amer. Dec. 738.
8. *Joannes* v. *Underwood*, 88 Mass. (6 Allen) 240.
9. *Joannes* v. *Pangborn*, 88 Mass. (6 Allen) 243.

abolitionists was made clear by his later public statements. In his summing up in the case of *Joannes* v. *Greeley*, he is reported to have said "that the Abolitionists had brought a terrible war upon the country; and that all abolitionists were his enemies".[10] Whether this attitude was the outgrowth of his clash with Governor Andrew or one of the causes of it, cannot be known, but that there was little love lost between the two from the beginning is apparent.

In the latter part of 1861 or 1862, the Count filed suit for libel against Joseph Nickerson, who had opposed him in the *Underwood* cases.[11] Among other witnesses who were summoned by the plaintiff was Governor Andrew, for whom a *subpoena duces tecum* was issued on January 29, 1862, and served upon him together with the witness fee required by law,[12] directing him to appear and bring with him a certain letter in his possession. The Governor sent word by the sheriff that he could not appear, but that the letter in question would be available. Whereupon the next day the Count wrote the Governor the following letter:

Sir,

I have this morning received a communication from Mr. Deputy Sheriff Sanborn, bearing to me a polite message from Your Excellency in reference to the *subpoena*—cojoint—*subpoena duces tecum* with which you have been duly served as my witness in my action vs. Joseph Nickerson, Esquire. You have courteously stated that a certified copy of the original letter received by the Governor of this Commonwealth from the Honorable the Secretary of War may be had by me for the Court. It would have afforded me infinite pleasure if my solemn interest as the Citizen would have permitted and my higher love of public justice would have sanctioned my yielding to your suggestion; but I have subpoenaed Your Excellency to give oral testimony as well as to produce in the Superior Court the said official letter. In issuing my subpoena, I gave full consideration to the inconvenience to Your Excellency and others in official station; but I am sure that you will applaud my resolution and pardon all personal inconvenience when the Honour, Liberty and Life of a Citizen, as well as of my fellow citizens, are in question. My right, therefore, and the authority of the Court are paramount—especially from Your Excellency, as the Chief Magistrate of this Commonwealth, bound by oath and by law (as well as inclination, which I doubt not) to protect the Citizen in these times of malicious treachery and rebellion.

I have the honour to be, Sir,
Your Excellency's fellow Citizen
and Obedient Serviteur,
The Count Joannes,
(Plaintiff in person)[13]

The day of the trial, however, came and passed, and Governor Andrew failed to appear. Thereafter, under date of June 9, 1862, the Count addressed the following epistle to the Governor's private secretary:

Sir,

I write this semi-official letter to you to prevent all inconvenience to His Excellency.

To the last jury term of the Superior Court I duly subpoenaed Gov. Andrew and the Sheriff duly paid the fees thereon: but the Governor did not appear at the Court in answer to the Writ, and, as I believe, to my injury as Plaintiff in the case.

Richard H. Dana, Jr., Esq., duly attended, but would not accept the fees from the officer; and His Hon. Judge Sprague (though an invalid) duly attended, but, treating me as a practical member of the Bar, courteously returned the fees.

His Excellency, however, never attended as a witness in the case, nor sent any excuse, but has retained the fees paid to him.

I write this letter upon principle—and I respectfully ask you to obtain the Governor's pleasure and instruction upon the matter, as to the return of the fees or not, under the circumstances—for it was intimated to me sometime since that they would be returned.

Respectfully yours,
The Count Joannes.

Across the envelope in which this document was contained, Governor Andrew endorsed in pencil, "Will Wm. Brown find out what Mr. Jones wishes. If any money was left for me return it. J.A.A.". Mr. Brown, the Governor's secretary, apparently did look into the matter, for he first replied by letter, as will later appear, and then, on June 19, 1862, called upon the Count in person, but found him out. Upon the latter's return to his office, he discovered the following memorandum of Mr. Brown's visit, written in pencil by a person unknown:

Mr. Brown the Gov's Sect'y. called and says that he has conferred with the Gov. and that there never is but one witness fee left and that that is all that belongs to you and that *the messenger says he gave that to you himself.*

After underscoring the final nine words, the Count promptly returned this note to the governor's secretary, enclosed in the missive quoted below and dated June 20, 1862:

Sir,

I found the enclosed in my office written by a person after your call yesterday. I stated that I was not certain whether His Excellency received one or two paid fees—as the Hon. Dwight Poston, Att'y. Gen'l., did receive two for the same case.

The reference to the amount paid by me, in regard to said subpoena—it is as follows—and which items thereon, I have received in writing from Mr. Deputy Sheriff Sanborn this morning prior to my calling in instant personal reply to the enclosed pencil memo.

Copy

Witness fees paid	$1.29
Service, travel and copy	.64
	$1.93

Mr. Sanborn, charge for serving subpoena for Count Joannes on Governor Andrew.

Jan'y. 29/62

So much for the am't.

I call your attention to the underscored last two lines of the enclosed pencil communication to me—which, if correctly written from your message to me, viz., *that the messenger paid me the amount or any amount whatever*—then, I distinctly write that the assertion is not true, and naturally most offensive and injurious to me, and highly derogatory, in reference to the subject matter of this incident between His Excellency and myself.

You will oblige by an instant and final answer. Ad interim,

Respectfully yours,
The Count Joannes.

The Count, having received no

10. *New York Times*, February 16, 1865.

11. The trial of the Nickerson suit is described in Armstrong, *op. cit.*, taken from Willard, *op. cit.* Suffice to say that the secession question and the length of the Count's ears both played important parts.

12. Or perhaps two, witness fees, as will appear later.

13. The Count's use of punctuation, abbreviation and capitals has been somewhat modernized in this and other letters.

reply to his letter, undertook within the next few days to call upon the Governor *in propria persona*. He sent in his business card, printed before the canon of ethics for the legal profession had been adopted, and bearing upon its face a request to his clientele which many a present-day attorney might like to reiterate:

THE COUNT JOANNES,
SPECIAL
COUNSELLOR & ADVOCATE
6 Tremont Street, Boston, Mass.

Clients are respectfully informed that Professional hours will be from 8 to 11 A.M., and from 3 to 5 P.M., when not otherwise engaged in Court; and, to save valuable time, it is requested that Clients' cases may be presented in writing; or, if by speech, then in the briefest manner.

The Governor received the Count, and a heated colloquy ensued, which the Count later described in detail in a letter to the Governor dated July 10, 1862. To undertake to describe this first meeting between the two principals in other than the Count's own words would be to fail to do it justice, for the letter referred to is one of the finest examples of the Count's epistolary style which has survived, displaying all the righteous indignation, dramatic presentation, and barbed exacerbation of which he was capable. It reads as follows:

Sir.

I yield to no man in respect for official Authority,—whoever, by good or evil fortune to a community occupies the chair of State, be he a Numa or a Nero, whether he worships the nymph Egeria or patriot-wisdom, or stabs his Nation in matricidal vengeance, to sustain a Subinal infatuation, or a deadly fanaticism! 'Render unto Caesar what is due unto Caesar' was taught me in my youth, and I cherish that Scriptural tuition in my manhood. Therefore, in this Letter to Your Excellency (your title by Law) I thus preface my respect for the office of Governor of this Commonwealth, that my fellow citizens may not mistake my legal proceedings against John Albion Andrew, though that name, for the unfortunate present, is clothed in the mantle of State Authority as Chief Magistrate.—The following narrative will speak for itself.—

A Citizen, whom you had wronged, recently called upon your Excellency for Justice. He approached you with all etiquette, and courteously, for his antecedents gave him full knowledge of that branch of life, and he requested Justice of you as Governor. This Citizen, and for the first [time?] in your presence, you received with the absence of all good manners, or even with the politeness of a Negro in the lowly path of Society. I use this comparison because your political sympathies with the black race will make you comprehend their proverbial politeness, to which even Washington returned salutation, and which commends itself to your imitation,—even to a white man!

I sought you *ex officio* for Justice; and though (I trust for that occasion only) you abdicated the dignity of Governor,—what could excuse the dethronement of Gratitude? That debt you owe me, as well as that which you refused to render me, for, I publicly defended you in the *Boston Post*, from political attack, when I believed that you did not deserve attack. I was in error, as the subjoined will testify. I will briefly recapitulate, that you may understand our present and future position.

To the last Jury Term of the Superior Court, a certain Libel suit was tried, in which I was Plaintiff in person. The Defendant's Counsel is your intimate political friend, and, as a necessity, like yourself, my avowed enemy, and may have advised your non-attendance.

In duty to my rights I duly subpoenaed as Witnesses Your Excellency, and the Hon. Judge Sprague; also the Attorney General, and the United States District Attorney—all *ex officio*. The Deputy Sheriff duly tendered, or paid from and for me, the fees to each Gentleman.

Richard H. Dana, Jr., Esq., notwithstanding our forensic battles, and treating [me?] as a Member of the Suffolk Bar, courteously refused to accept any fee as Witness. Judge Sprague, who then being an invalid attended at great personal inconvenience, generously returned his fees, when he knew that I pleaded my own cause in Court. The Attorney General kept his witness fees, as did your Excellency. All duly attended, except Yourself! You did not appear as commanded by the Writ of *Subpoena duces tecum*, to "bring with you" the official Letter from the Secretary of War (and which had been published) and which document was most material to my case, as, also, your own personal presence as attesting evidence. You received and pursed my money as Witness; was duly served with the Subpoena of the Court; and, apparently, despising my rights and injuries, as well as the authority of the Commonwealth, represented by the official Writ of its Judicial tribunal, you depart for Washington, and (as I believe) upon your own suggestion, in reference to your political opponent Gen'l. Butten—and untelegraphed by either his Excellency the President, or the Secretary of War.

The jury, however, gave a verdict in my favor, but your absence and the non-production of the original Letter caused a mere nominal verdict, instead of a substantial one. That I did not demand a *Capias* for your arrest was because I respected the office of Governor. Upon principle, however, I demanded back from you my money, which you had received to my use, as well as the expenses of service by the Sheriff; apart from my claim upon you for damages. I wrote to your private secretary, in order not to interfere with your official duties, and received the following answer from you upon the subject of the minor demand.

"Commonwealth of Massachusetts
Executive Department
Boston, June 11, 1862

"To the Count Joannes.

"Sir.

"In reply to your note of the 9th Inst. received by me today, I am di-

Walter P. Armstrong, Jr., a member of the Tennessee Bar, is a frequent contributor to the *Journal*, and is active in the work of our Association. He is a former Chairman of the Committee on Jurisprudence and Law Reform. He succeeded the late Judge Robert P. Patterson as Chairman of the Commission on Organized Crime this winter.

rected by His Excellency the Governor to state that if any money was received by him, or by any person on his behalf as fees in the matter referred to, it shall be returned to you. I will call at your office tomorrow noon in reference to the subject.

"Very Respectfully Your Obed't. Servt.
"A. G. Browne Jr.
(Private Sec'y.)"

In a courteous interview with Mr. Browne as intimated in the above letter, the same promised result was given; and, a few days afterwards, that Gentleman called (I was in the Law Library) and left word, to my amazement, that,—the Governor's Messenger says that *he paid me back my money*! I instantly wrote to your Sec'y. that if his message was correctly transmitted to me, then the words of the Messenger of the Governor were totally untrue; for, he never paid me any money, at any time, or in any place, and I requested an instant and final reply upon the subject. None came.

Being thus apparently compromised by a malignant falsehood, and having waited several days for an answer, I personally called upon Your Excellency on the 28th inst. for Justice upon the subject matter. The courteous and polite manner in which you received me I have alluded to; and certainly I never witnessed its equal in any of my personal receptions from Presidents, Governors, Judges, Senators or Statesmen; by Emperors, Kings, Archbishops or Cardinals; by Philosophers, Princes, or Peasants; and although the author of "*Junius*" has never been identified, the authorship of "*Chesterfield*" I cannot impute to Your Excellency.

I now record the dialogue, substantially, that took place between us, and for convenience I place it in a dramatic form.—

"And since you know you cannot see yourself
"So well as by reflection, I, as your glass,
"Will modestly discover to yourself
"That of yourself, etc.
"Well—Honour, is the subject of my story."

Scene. State House. The Governor's reception room and library. Present. His Excellency, standing at a centre table looking at papers. Secretaries seen in an adjoining room writing. Various Gentlemen seeking for office or charity. The Governor suddenly raises his eyes and frowningly fixes them upon the Count Joannes, as he is duly ushered into the official presence, having previously sent in his card. After the Governor has politely attended to several applications, he declares in reference to the State House (apart from his Secretary) that he has the appointment only of his own "Messenger", whereupon the Count respectfully advances. Dialogue between His Excellency and the Citizen seeking only justice.

Citizen (saluting and smiling) Your Excellency! Are you at leisure for a few moments?

Governor (not returning the salutation, but abruptly and frowning) I am never at leisure!

Citizen (respectfully) Have you five minutes to spare, that I may speak to you, upon the subject of which I have written?

Governor (reading papers and indifferently) I always hear persons when they call. (to attendant) Take this paper and see if an answer is required.

Citizen (firmly) Then, Your Excellency, I speak to you upon a matter of Honour; as before I wrote to you upon that of Principle—not money. Your Secretary has stated that your Messenger says that he paid me back the money you received to my use from the Sheriff. That assertion of your Messenger is not true!

Governor (abruptly) I have no money of yours in my possession. I have no more to say. (puts on his glasses and continues reading)

Citizen (firmly) I respectfully request that you will order your "Messenger" before us.

Governor (moving his hand and seating himself) I have nothing more to say.

Citizen (respectfully, but with energy) Then, Your Excellency, *I* have more to say. You are Governor of Massachusetts. I am a Citizen of this Commonwealth, and of the United States. I demand Justice of you as Chief Magistrate, against one of your own appointed Servants, who has dared to state that he paid me back my money, which you received to my use. That assertion of your Messenger (be he black or white) is a rank falsehood! (a pause; fixed looks of Governor and Citizen, each at the other)

Citizen (continues) I have a right for Justice from you upon this subject. Therefore I again respectfully ask you to order your "Messenger" before us!

Governor (looking amazed; reclines back in his chair and peruses papers) I have nothing more to say!

Citizen (with energy in defense of Right) Do you deny Justice to a Citizen whom you have wronged? Be it so! Then you shall find whether our Courts of Justice are not more than equal to John Albion Andrew! I respectfully take leave of Your Excellency!

Exit Citizen, saluting the Governor, who attempts to smile derisively at his unexpected visitor, but failing, continues perusing papers.

Thus terminated my appeal to you for Justice! The matricidal Nero, heathen Emperor as he was, did not refuse Justice upon appeal, even to the humble tent-maker; but you—Governor of a Christian Commonwealth,—deny it to a Citizen, your equal in all that comprises the Citizen, the Scholar, the Gentleman, or the true unconditional Patriot!

When attempted insult is joined to injuries, super-added by injustice on your part, I view no more the Governor as the Chief Magistrate, but simply John Albion Andrew; and since you seem to despise the "Law of Writ", I am not responsible for legal proceedings against you in the Police and Superior Courts, as they are the only arenas left wherein I can vindicate my rights against you; though out of respect still for your office I proceed only in the latter Court.

Fiat Justitia—ruat Coelum!

You attempted to insult a Citizen who came to you for Justice, and you took advantage of the presence of others, and in your official residence, where, by your wrongs to him you had invited him! And why did you employ such unwarranted behavior? I will answer for you. It was because I had the Patriotism, in my public Reply to Senator Sumner, and previously, in my oration upon Washington at Old Faneuil Hall, and in the presence of applauding thousands of my fellow-citizens, to denounce to public execration, those pseudo-philanthropists

(Continued on page 444)

A Manuscript from Monticello:

Jefferson's Library in Legal History

by Edward Dumbauld • of the Pennsylvania Bar (Uniontown)

■ In 1808, the Virginia Court of Appeal received a case in which the liberty of two individuals hung upon the question of whether a certain statute had been passed by Parliament in the reign of William and Mary. It took a letter to the President of the United States to obtain a copy of the act. The President, of course, was Thomas Jefferson, who collected dozens of manuscripts relating to the early Colonial laws and whose library was one of the largest in the country. Mr. Dumbauld writes of that library — which became the nucleus of the Library of Congress — and of the way courts of those days treated it as a kind of depository of public records.

■ The occasions on which historical research has actually influenced court decisions are not numerous. The most striking instance within recent years is the leading case of *Erie Railroad Company* v. *Tompkins*,[1] where on the strength of an article by the noted legal historian Charles Warren[2] the Supreme Court in 1938 (of its own motion and without suggestion from counsel) overruled a decision[3] that had stood for almost a century in spite of criticism by Justice Holmes and other eminent lawyers.

In Daniel Webster's time, that redoubtable advocate was defeated by Horace Binney in the Girard will case[4] when the Supreme Court was convinced, by a recital of some fifty instances extracted from documents published by the Commissioners of Public Records in England, that charitable trusts had been enforced long before the enactment of the Statute of Charitable Uses in the reign of Queen Elizabeth I.[5]

Of course in numerous cases where interpretation of constitutional provisions such as the First or Fourteenth Amendments involves inquiry as to the intentions of the framers, historical investigation is often important, but seldom decisive.[6] The same is true of litigation where legal consequences depend upon the state of things at a given time, such as cases involving the right of jury trial "as heretofore,"[7] or the powers of the Continental Congress before adoption of the Constitution,[8] or the law or territorial extent of a state when it was admitted to the Union,[9] or similar matters. Ordinarily the historical data included in a lawyer's brief are merely "ornamental citations".[10]

But sometimes, in Justice Holmes' phrase, "a page of history is worth a volume of logic" to litigants and their lawyers.[11] A memorable but little-known illustration of that truth is recorded in the law reports of the Commonwealth of Virginia. In *Pallas* v. *Hill*,[12] a case decided in 1808 by the Virginia Court of Appeals, human liberty was at stake. The slender reed upon which it hung was a manuscript

1. 304 U.S. 64, 72-73, 77-78 (1938). See Robert H. Jackson, "The Rise and Fall of Swift v. Tyson", 24 *A.B.A.J.* 609 (1938); Paul Freund, *On Understanding the Supreme Court* (1950) 73.

2. Charles Warren, "New Light on the History of the Federal Judiciary Act of 1789", 37 *Harv. L. Rev.* 49 (1923). Mr. Warren showed (page 86) that the act meant to adopt as the rule of decision in federal courts the law of the states as expressed in their court decisions as well as the enactments of their legislatures.

3. *Swift* v. *Tyson*, 16 Pet. 1 (1842). This case held that federal courts were not bound by state judicial decisions involving questions of "general common law", as distinguished from statutory law.

4. *Vidal* v. *Girard's Executors*, 2 How. 127 (1844).

5. *Id.* at 192-96. The statute of 43 Eliz. c. 4 was not in force in Pennsylvania, where Stephen Girard's will was probated. It had been abolished by Virginia legislation, and a gift by a resident of that state to an unincorporated association for charitable purposes had been held invalid (opinion by Chief Justice Marshall) in *Trustees of the Philadelphia Baptist Assn.* v. *Hart's Executors*, 4 Wheat. 1, 29-36 (1819). The Girard trust was upheld.

6. *Everson* v. *Board of Education*, 330 U.S. 1, 8-13, 19, 28-41 (1947); *Adamson* v. *California*, 332 U.S. 46, 54, 71-72, 92-123 (1947); *American Communications Association* v. *Douds*, 339 U.S. 382, 399, 439, 447 (1950).

7. Pa. Const. Art. I, §6: "Trial by jury shall be as heretofore, and the right thereof remain inviolate". Pa. Const., Art. V, §4: "Until otherwise directed by law, the courts of common pleas shall continue as at present established, except as herein changed." *Schwab* v. *Miller*, 302 Pa. 507, 510 (1931); *Pa. P.U.C.* v. *Israel*, 356 Pa. 400, 410-11 (1947); *Georges Twp. School Directors*, 286 Pa. 129, 134-36 (1926); *Marshall Impeachment Case*, 360 Pa. 304, 308-10 (1948).

8. *Penhallow* v. *Doane's Administrators*, 3 Dall. 54, 80, 95, 109 (1795); *Ware* v. *Hylton*, 3 Dall. 199, 224-5, 231-33, 238 (1796); *U.S.* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 316 (1936).

9. *Rosen* v. *U.S.*, 245 U.S. 467, 470 (1918); *Jin Fuey Moy* v. *U.S.*, 254 U.S. 189, 195 (1920); *Olmstead* v. *U.S.*, 277 U.S. 438, 466 (1928); *U.S.* v. *California*, 332 U.S. 19, 29-33 (1947); *U.S.* v. *Texas*, 339 U.S. 707, 712-15, 723-24 (1950).

10. Frederick Bernays Wiener, *Effective Appellate Advocacy* (1950) 120-25, 142-48.

11. *New York Trust Co.* v. *Eisner*, 256 U.S. 345, 349 (1921).

12. 2 Hen. & Munf. 149 (1808).

from Monticello. Fortunately for the parties in that case whose right to freedom was under scrutiny by the Virginia court, Thomas Jefferson was a diligent and painstaking antiquarian and student of legal history. In the library of his mountaintop abode which stood within sight of Charlottesville,[13] he had assembled a collection of manuscript materials which contained the item necessary to demonstrate that the individuals involved were entitled to their liberty.

In this incident, as well as in his better-known public services such as his authorship of the Declaration of Independence,[14] Jefferson's legal scholarship and historical studies bore fruit in furtherance of the cause of human liberty.

Jefferson Charged No Fee for Representing Slaves

Pallas v. *Hill* was an action in which the plaintiffs, whom the defendants sought to hold as slaves, sued for liberty. Jefferson had brought several such suits while he was engaged in private practice as a lawyer.[15] It was his custom to charge no fee in that type of case.

On May 2, 1772, Jefferson's casebook in the Huntington Library discloses, he was employed to represent "Sibyl (an Indian who prays to sue in formâ pauperis)" in a suit against Joseph Ashbrooke of Chesterfield County. Regarding the steps to be taken in this case Jefferson wrote: "Move for leave to sue for freedom. Charge no fee."[16]

Apparently the form of action used in a suit for freedom brought on behalf of a person wrongfully claimed by another as a slave was trespass for assault and battery or false imprisonment. The restraints and chastisements inflicted upon slaves undoubtedly constituted sufficient grounds for such an action, in the absence of the privilege which the status of slavery accorded to the master of a slave. If the person held in servitude were not a slave, he could recover against a wrongdoer who unlawfully deprived him of the liberty enjoyed by free men.

In an entry dated September 10, 1772, Jefferson recorded his employment in such a case by George Manly against Richard Callaway, both of Bedford County. "Bring action of A.B. to recover freedom. Charge nothing." On the second day of November the writ was issued. About a year later Jefferson obtained a verdict and judgment for £50.[17]

Under date of November 1, 1772, in the case of "Isaac an Indian" against James Powell Cocke, both of Henrico County, Jefferson noted: "Bring action for freedom. Charge no fee." Two days later the writ was issued.[18]

In *Pallas* v. *Hill* the defendants proved that Indian Bess, from whom plaintiffs proved descent, was brought to Virginia in 1703. The trial court denied plaintiffs' motion for instructions that no native Indian brought into Virginia since 1691 could be made a slave. The court held that such a ruling would be correct in the case of any Indian brought in since 1705, but that from 1679 to 1705 Indians who were taken prisoners could be held in slavery and that from 1682 to 1705 those sold by other Indians could be so held.

The law was clear that the Act of 1705[19] relating to trade with the Indians was construed by the Virginia courts as a complete bar to slavery insofar as American Indians were concerned.[20]

Moreover, Judge Tucker in 1806[21] had mentioned his recollection of having seen on the Eastern Shore a copy of Purvis[22] which contained an Act of 1691, in handwriting, inserted at the back of the book following the printed statutes. It was Judge Tucker's belief that it was this Act of 1691, not the Act of 1705, which first authorized free trade

13. For descriptions of Monticello, see Edward Dumbauld, *Thomas Jefferson, American Tourist* (1946) 26-27, and works cited therein. Jefferson's library later was sold to the Government and became the nucleus of the Library of Congress. *Id.* at 161. Miss Millicent Sowerby at that institution is engaged in preparing a thorough descriptive catalogue of Jefferson's library. The extent of Jefferson's law library is reflected in catalogues of his books. A manuscript catalogue begun March 6, 1783, is in the Massachusetts Historical Society. A letter to Samuel H. Smith, Monticello, September 21, 1814, 11 Ford, *The Works of Thomas Jefferson* (1904) 429 states that his law collection is exactly as catalogued when his library was offered to Congress. This catalogue was later printed. *Catalogue of the Library of the United States* (1815). When after Jefferson's death some of his property was sold at auction by Nathaniel P. Poor, there was issued *Catalogue, President Jefferson's Library*. (1829).

14. Edward Dumbauld, *The Declaration of Independence and What It Means Today* (1950) 20-23, 42, 56, 121, 146; Gilbert Chinard, *The Commonplace Book of Thomas Jefferson* (1926) 9.

15. Jefferson's achievements in public life loom so large that even members of the legal profession often lose sight of the fact that he was engaged in private practice for eight years. Regarding his legal career see John W. Davis, "Thomas Jefferson, Attorney-at-Law," 38 *Proceedings of the Virginia State Bar Association* (1926) 361-77; and Roland S. Morris, "Jefferson as a Lawyer," 87 *Proceedings of the American Philosophical Society* (1943) 211-15. His case book in the Huntington Library records 941 cases. The first entry is dated February 12, 1767, and the last November 9, 1774. After almost eighteen years on the Massachusetts bench Justice Holmes exclaimed: "A thousand cases, many of them upon trifling or transitory matters, to represent nearly half a lifetime!" Holmes, *Collected Legal Papers* (1920) 245.

16. Case No. 659. Jefferson's Case Book, Huntington Library, Manuscripts Division. No writ was taken out in this case. The plaintiff died while it was pending. Her daughter Biddy's son was plaintiff in *Gregory* v. *Bough*, 2 Leigh 665, 678, 692 (1831). From the report in that case it appears that on October 13, 1772, an order was made: "On the motion of Sybill, who is detained in slavery by Joseph Ashbrooke of Chesterfield county, she is allowed to sue her master in forma pauperis, and Mr. Jefferson is assigned her counsel to prosecute the said suit: and it is ordered, that her master do not presume to misuse her on this account, & that he allow her to come &c. attend &c." *Ibid.* 668. Such an order was customary in this type of case, and was made upon the strength of plaintiff's counsel's opinion that the suit was meritorious. *Ibid.* at 671; *Coleman* v. *Dick & Pat*, 1 Wash. 233, 239 (1793).

17. Case No. 708. A later entry in this item reads: "-1774. Feb. 7. Verd. & jdmt for £ 50. & costs in Octob."

18. Case No. 769. "-Nov. 3. issd. writ in AB. &c false imprisonment. Dam. £ 200."

19. 4 Anne c. 52, Session of October 23, 1705, 3 Hening, *The Statutes at Large*, 464-69.

20. *Coleman* v. *Dick & Pat*, 1 Wash. 233, 239 (1793).

21. *Hudgins* v. *Wrights*, 1 Hen. & Munf. 134, 138-39 (1806).

22. *A Complete Collection of All the Lavvs [sic] of Virginia Now in Force. Carefully copied from the Assembly Records. To which is Annexed an Alphabetical Table.* London, Printed by *T. J.* for *J. P.* and are to be sold by Tho. Mercer at the sign of the *Half Moon* the Corner Shop of the *Royal-Exchange* in *Cornhil*. Compiled by John Purvis and probably printed in 1684, this collection of Virginia laws was widely used. It had blank pages at the back of the book. Fifty pages of manuscript laws are written in the Virginia State Library's copy of Purvis. See William H. Martin, "Some Virginia Law Books in a Virginia Law Office," 12 *Va. Law Register* (N.S.) (1926) 74, 79-80, and John S. Bryan, "Report of Committee on Library and Legal Literature", Report of Tenth Annual Meeting of the Virginia State Bar Association (1898) 55, 62.

with the Indians and abolished Indian slavery.[23]

If Indian slavery was abolished by an Act of 1691, then the descendants of Indian Bess, who was brought to Virginia in 1703, were free. If no such act were law, then the Act of 1705 would be too late to be applicable for their benefit, and they would be slaves.

Whether there existed an Act of 1691 was the question in *Pallas* v. *Hill*.

Jefferson Manuscript Is Key to Case

When the case came up for argument in the Virginia Court of Appeals on November 10, 17, and 18, 1807, the clerk of the court, William Waller Hening, produced a manuscript from Northumberland County which contained the Act of 1691.[24] After seeing the Northumberland manuscript, Judge Roane proposed that application be made to Jefferson to see whether the Act of 1691 appeared in his collection of Virginia laws.[25] As a large amount of property was involved, the court did not wish to decide the question upon the authority of a single manuscript copy of the act, and postponed the case until the next term in order that inquiry might be made regarding the Monticello manuscript.[26]

On February 7, 1808, Hening wrote to Jefferson, who was then President of the United States, stating that: "During the last session of the court of Appeals, six cases were argued which depend entirely upon the question whether an act of 1691 be the law of the land or not. The Judges were furnished with a MS collection of mine (with which I was presented by the court of Northumberland county) comprehending the acts from 1662 to 1699; but as property to a very large amount was involved in this question, the court was unwilling to decide upon a view of a single MS act, altho' it bore every mark of authenticity. The judges have, consequently, directed the causes to remain undecided till the next term . . . and have requested that in the mean time I should endeavour to procure a copy of the same act from your collection. The act to which I allude passed at a session commencing in April 1691. It is chap. IX of the acts of that session; the title of which is an 'Act for a free trade with Indians'. I am not certain whether your MSS are in such a state of preservation as will admit of their being opened more than once. Should this be the case I could not expect to be furnished with the act even were you at Monticello. But if it can be obtained thro' the agency of any of your friends who may have access to your library, it will confer a singular favour on the judges, and will be aiding the cause of humanity."[27]

Jefferson replied on February 26, 1808, that he had written to his son-in-law Thomas Mann Randolph to procure a copy of the act.

When the case came up the following term, Hening on March 15, 1808, produced a copy of the manuscript from Monticello containing the Act of 1691. He also had obtained a copy of the Eastern Shore manuscript which Judge Tucker had recalled seeing.

Upon examination of these manuscript laws, Judge Tucker declared that he was satisfied that the Act of 1691 was in force. The Eastern Shore, Northumberland, and Monticello manuscripts agreeing, nothing but a miracle or the genuineness of the statute could have produced such uniformity among the three texts. On March 22, 1808, the Court of Appeals rendered its decision, holding that the plaintiffs were not slaves.[28]

Edward Dumbauld is a graduate of Princeton and the Harvard Law School. A member of the Pennsylvania and District of Columbia Bars, he is now in private practice in Uniontown, Pennsylvania, after having served as Special Assistant to the Attorney General of the United States. He is the author of various books and articles on legal and historical subjects.

The manuscript from Monticello thus tipped the scales in favor of freedom.

Courts Often Turned to Jefferson for Aid

This striking case was not the only instance in which the courts turned to Jefferson for assistance. A bound volume belonging to him which contained the Virginia statutes from 1734 to 1772 was frequently resorted to in judicial proceedings in all parts of the state. Until after 1733 the acts passed at each session of the legislature were preserved only in handwritten copies supplied to the

23. He believed that the revisal of 1705 merely re-enacted the Act of 1691, and that the Act of 1691 had the effect of repealing the provisions contained in the Act of 1679 regarding prisoners and in the Act of 1682 regarding Indians sold by other Indians. On this subject see 1 Hening, *The Statutes at Large*, vii. For the acts of 1679 and 1682 see 2 *id.* 433, 440; 490-91. The court in *Pallas* v. *Hill*, in view of the precedents since 1777, refused to hear argument on the question whether the acts authorizing Indian slavery were repealed by the act for free trade with the Indians. 2 Hen. & Munf. 152. By a curious irony, however, had a volume of decisions of the General Court collected by Jefferson but not published until 1829 after his death been available, the case of *Robin* v. *Hardaway*, Jeff. 109, 123 (1772), would have disclosed an earlier holding that the act of 1691 did not repeal the act of 1682, but that the act of 1705 did. *Gregory* v. *Baugh*, 2 Leigh 665, 681 (1831).

24. 3 Wm. & Mary c. 9, Session of April 16, 1691, 3 Hening, *The Statutes at Large*, 69. Hening was already engaged in publication of the Virginia statutes, and was using the Northumberland manuscript. See William H. Martin, "Hening and the Statutes at Large," 13 *Va. Law Register* (N.S.) (1927) 25-37; 2 Hening, *The Statutes at Large*, 42. Jefferson was influential in encouraging the Virginia legislature to sponsor this project.

25. 2 Hen. & Munf. at 151, 159.

26. *Id.* at 150.

27. Library of Congress, Jefferson Manuscripts.

28. 2 Hen. & Munf. 157-58.

clerk's office of each county court.[29] Even after it became the practice for these session laws to be printed regularly, no one but Jefferson seems to have taken the pains to assemble a consecutive series of them.

Since this book of Jefferson's was the only complete collection of the sessions acts for the period covered which was then available, its destruction would have been an irreparable loss. Hence he never allowed it to be taken any further from Monticello than to the neighboring towns of Milton or Charlottesville "not only because it might be lost, but because while it was gone out in the service of one person many might have reason to recur to it".[30] The courts treated Jefferson's library as being in substance a depositary of public records and would accept a copy from Jefferson of any particular act of assembly involved in proceedings before them "instead of requiring the volume itself to be produced to them as evidence".[31]

In 1809 this precious volume was delivered to William Waller Hening to be reprinted as part of his thirteen volume collection of *The Statutes at Large of Virginia*. When Jefferson first looked for this book in order to send it to Hening he "found that precisely the volume containing my printed laws from 1734. to 1772. is not in the library. Having received often applications from courts & individuals for copies from that volume, I imagine it has been trusted to some one in the neighbourhood to copy some act, & not returned."[32] Upon searching for it, he learned it was in the hands of his relative George Jefferson, a R[illegible]mond merchant, "with an injun[illegible]tion not to let it out of his possession".[33] It had been sent there in 1805 when James Daly Burk had requested the use of Jefferson's printed statutes while writing *The History of Virginia, from its First Settlement to the Present Day*.[34] Hening was thus able to obtain the volume of session acts, which he retained, after the sale of Jefferson's library to the Library of Congress, until these laws were reprinted in his *Statutes at Large*.[35]

Unfortunately Jefferson did not take similar precautions with respect to custody of his twelve-volume collection of newspapers covering the years from 1741 to 1783. This also was a unique collection, which had cost Jefferson considerable time, trouble and expense to assemble; but when Burk wished to borrow material covering "the obscure & dreary" period from Bacon's Rebellion to 1752, George Jefferson was directed to deliver the newspapers to the historian himself. They were never returned to their owner, nor could their whereabouts be discovered thereafter.[36]

Besides the printed session acts which Jefferson supplied for publication by Hening, he also furnished a valuable collection of unprinted laws. Eight items were included in the manuscript collection which was sent to Hening in 1808.[37] One of these manuscripts had been found by Jefferson in a tavern, where it was being used for waste paper. The clerk of the court, who was the legal custodian of the paper which Jefferson thus rescued, "very readily" gave it to him for his collection at Monticello.[38]

Lost Manuscripts Are Recovered

Another manuscript belonging to Jefferson had come to Hening from Edmund Randolph. Randolph had borrowed it, along with other manuscripts, from Jefferson's library while the latter was abroad as minister to France, and had taken them with him to New York while serving as Attorney General in Washington's cabinet. When Randolph moved to Philadelphia, the box containing them was lost. Some years later it was found under a pile of cordage in a warehouse, in New York, and the manuscripts were returned to Jefferson at Philadelphia; but one of them, which he considered the most valuable, was missing. He learned with great joy in 1815 that it was still in existence and had come into Hening's hands.[39]

(Continued on page 446)

29. According to 1 Barton, *Virginia Colonial Decisions* (1909) 193, session acts were not printed in Virginia until William Parks began to do so after publication in 1733 of his *A Collection of All the Acts of Assembly, Now in Force, in the Colony of Virginia*. This was the first law book printed in Virginia.

30. Jefferson to John D. Burk, Washington, June 1, 1805. 10 Ford, *The Works of Thomas Jefferson* (1904) 147, 148. "The 5th volume is the only one of which there exists probably no other collection. This fact being generally known, the courts in the different parts of the state are in the practice of resorting to this volume for copies of particular acts called for in the cases before them." *Ibid.* Jefferson's collection of printed laws contained eight volumes. Of these, volumes 5 and 6 comprised the sessions acts from 1734 to 1783, the date of the so-called "Chancellor's Revisal". Jefferson to George Wythe, 8 *ibid.* 214, 216. See note 41 *infra*.

31. Jefferson to John D. Burk, February 21, 1803. Library of Congress, Jefferson Manuscripts.

32. Jefferson to Hening, July 25, 1809. Library of Congress, Jefferson Manuscripts.

33. Jefferson to Hening, August 28, 1809. On September 4, 1809, Hening wrote to Jefferson that he had received the volume from George Jefferson. Library of Congress, Jefferson Manuscripts.

34. Four volumes. Petersburg, Virginia, 1804-16. The last volume was the work of Louis Hue Girardin. Regarding this history see 1 Ford, *The Works of Thomas Jefferson* (1904) 79, and *Thomas Jefferson Correspondence Printed from Originals in the Collections of William K. Bixby* (1916) 257.

35. Jefferson to Hening, March 11, 1815; Hening to Jefferson, March 15, 1815; Jefferson to Hening, March 25, 1815; Hening to Jefferson, August 19, 1820. Library of Congress, Jefferson Manuscripts.

36. Regarding Burk's borrowing of Jefferson's statutes and newspapers, see Burk to Jefferson, May 26, 1805; Jefferson to Burk, June 1, 1805 (Library of Congress, Jefferson Manuscripts); Jefferson to T. M. Randolph, June 2, 1805; Jefferson to Governor John Page, June 2, 1805 (Massachusetts Historical Society); Jefferson to Burk, June 12, 1805 (Library of Congress, Jefferson Manuscripts); Jefferson to George Jefferson, June 12, 1805. 18 Lipscomb and Bergh, *The Writings of Thomas Jefferson* (1905) 247.

37. List dated June 7, 1808. Library of Congress, Jefferson Manuscripts.

38. "I found it in Lorton's tavern, brought in to be used for waste paper. Much had been already cut off for thread papers and other uses. Debnam, the then clerk, very readily gave it to me, as also another hereafter mentioned. It still contains from chap. 31 of the session of 1661/2 to 1702". Item 17010, dated January 13, 1796, Library of Congress, Jefferson Manuscripts. The date Jefferson thus acquired the Charles City manuscripts is not stated. His account book shows payments for entertainment at that tavern on October 6, 1770, and December 10, 1770. But he traveled that route often while courting the future Mrs. Jefferson at The Forest, in Charles City County. They were married on January 1, 1772. Dumbauld, *Thomas Jefferson, American Tourist* (1946) 37.

39. Jefferson to Hening, April 8, 1815; Hening to Jefferson, April 15, 1815; Jefferson to Hening, April 25, 1815. Library of Congress, Jefferson Manuscripts. See also the list of January 13, 1796, referred to in the preceding note. Hening inserted in his publication of the statutes a correction showing the pedigree of this manuscript, which he returned to the Library of Congress, it having purchased Jefferson's library in 1814. Hening to Jefferson, September 23, 1816; Jefferson to Hening, October 12, 1816; Hening to Jefferson, August 19, 1820; Jefferson to Hening, September 3, 1820; Hening to Jefferson, September 9, 1820. Library of Congress, Jefferson Manuscripts. 1 Hening, *The Statutes at Large* (2d ed. 1823) xxiii, 238.

An Equal Rights Amendment:

Would It Benefit Women?

by **Mary L. Brophy** • Head of the Department of Social Sciences at Mundelein College (Chicago)

▪ This article is a reply to Ethel Ernest Murrell's essay, which appeared in our January issue, bespeaking support for an amendment to the Federal Constitution granting women equal rights. Dr. Brophy takes the position that such an amendment is unnecessary and might seriously endanger modern social legislation intended to protect women from exploitation.

▪ To please insistent constituents, both political parties, we are told, sponsor a proposed amendment to our Federal Constitution that "Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex." At first glance it would seem that all fair-minded citizens and especially women should favor what looks like a correction of a patent injustice in our law. Nonetheless some important organizations of women, including the far-flung League of Women Voters, oppose such an addition to the Constitution. This article is written in support of the opposition's view.

In the January, 1952, issue of this JOURNAL, beginning at page 47, there appeared an enthusiastic plea for the adoption of this amendment. I should like to examine the details of that plea and add a few observations that seem to me in point.

In the first place, assuming that the Constitution has been so amended, what meaning would courts attach to "equality of rights"? In the plea itself, the author confuses rights, duties, privileges. In common parlance, the term is used very loosely. Judicial verbiage is even more bewildering. What originally has been adopted in one of the states, for instance, as a protective measure for either women or children is often referred to as a right, which of course, in some sense it is, as an establishment of the law. It is conceivable that such an amendment could be interpreted to extend the protections, properly and necessarily accorded to women, to the male population. Accordingly such states as have laws prohibiting night work for women would prohibit night work for men also. Facetious? Perhaps, but less to be deplored than would be a return to the era of unprotected women and children, to the rugged individualism of early America and to the ragged individualism of eighteenth- and nineteenth-century England and the mud-larks.

While social scientists deplore the artificiality of state boundaries here in the United States and some advocate area or regional unities, no reputable scientist and certainly no lawyer, has ever advocated the de-state-ification of the United States. Most lawyers deplore the encroachments the Federal Government is constantly making on state boundaries. But all the inroads of the last twenty years would be mere cowpaths compared with the broad avenues opened up to national supervision by this proposal.

Woman Suffrage Has Not Led Women to the Polls

It might be pointed out that the citizenship defined in the Fourteenth Amendment to the Constitution pertains to "all persons". Have courts in this country ever held that women are not persons? The Fifteenth Amendment prohibits the restriction of suffrage on grounds of "race, color and previous condition of servitude", how effectively anyone familiar with practices in our white-supremacy states can testify. The Nineteenth Amendment adds "sex" to the foregoing three, though substantially one single category. What this latter amendment has achieved for the country other than doubling the electorate has, as far as I know, been chivalrously unquestioned. Certainly it is true that the ladies utilize their "right" to vote no more intelligently or frequently than do the gentlemen. It would be salutary indeed if both men and women saw in the right to vote a duty to vote and to participate conscientiously in our republican form of government. It is superfluous to note here that there is no national suffrage in these United States.

The second *desideratum* seems to be the utilization of women for jury duty in all the states. Jury duty is an onerous responsibility. Only the most dutiful of our citizens fail to take any available refuge to evade it. Most states exempt professional persons. I'm yellow enough to be glad I'm exempt and probably most lawyers are of a similar hue. However, if women are subject to call to jury service, those whose profession is that of home-maker should have a right to exemption, for surely no present exemption is predicated on better grounds.

The author referred to the jury trial, its antiquity, its sacredness, bewailing the discrimination against women presently entailed. The pertinence of the observation eludes me. As our laws stand, women have the same right to trial by jury as men have. Are women disadvantaged on trial before men jurors? Probably not. Has the jury been improved by the addition of women to the "good men and true summoned from the body of the country"? No lawyer needs that answer.

The International Labor Organization's proposal limiting night work for women the world over is certainly an enlightened and socially justifiable restriction on women's right to work, or to be exploited, depending on the point of view. Such restriction already prevails in the states more progressive in social legislation. The author seems to be vaguely pleading for an amendment in order that such ratification could be made effectively by the Federal Government alone. However, let us assume that state acceptance and federal ratification of the treaty have been made, then the proposed amendment directly inconsistent with it, but later in point of time, spells out terrible confusion. While technically the amendment, being later, overrules the treaty provisions, other countries are involved when treaties are judicially construed, making it imperative for courts to honor our international obligations as far as possible. These difficulties could be disregarded if circumstances justified them. However they are suggested here only with a view to obviating them.

Examples of Other Nations Are Not in Point

The argument that New Zealand and the Netherlands have equality before the law *and* maternity benefits from which men are, of course, excluded, pension laws, etc., offers little support to the case. These countries are small, homogeneous, and thousands of other factors doubtless enter into the happy result of "equal rights" for men and women there. But our governments, state and national, are concerned with vast heterogeneous populations that pose problems and questions nonexistent in a relatively less complex structure with an entirely different tradition of law-making and interpretation. It is urged that beneficial statutes compensatory to those who have rendered special services to society, *e.g.*, mothers, should be as consistent as those making awards to veterans and therefore, constitutional now and under the proposed amendment. But the case is by no means parallel. The veterans have already obligated society to them. The legislation for women is most needed for the young women who will not make society their debtors for years to come. How limitation on the exploitation of these eager and socially irresponsible lassies can be effected other than by the type of legislation the amendment would prohibit, is a dilemma. Surely there is no doubt that the restrictions are demanded for the common good, for the "general welfare". In *Connolly* v. *Union Sewer Pipe Company*, 184 U.S. 540, we have a judicial decision that actually upholds this point of view and points up the necessity of retaining present legitimate classifications. And far from excluding the ladies from "the greatest document of human rights yet drawn by man" such legislation actually puts them securely within its folds.

It would be very interesting to see a tally of the women's organizations that support the Equal Rights Amendment. Thirty million is a large number of women! It would be even more interesting to learn what the supporters think is involved in the equalities proposed. The enthusiast, chafing at old common-law standards still prevailing in Texas, South Carolina, *et al.*, may advocate a simple operation to cut the Gordian knot, but the eradication of those outmoded restrictions in the relatively few states that retain them should not be allowed to eliminate benefits that years of painful labor have achieved for women in the vast majority of our states.

Women Are Not Deprived of Any Constitutional Rights

"What, gentlemen, would you trade for your constitutional rights?" What constitutional rights, gentlemen, do you have of which I am deprived? The answer in each case is, as far as the National Constitution goes, nothing. As far as the various state constitutions are concerned, many have admitted legislation that furthers the general purpose of government, *i.e.*, realizes the common good, the common welfare. This demands a greater protection by law for the weaker of the citizens. That weakness, economic inequality, is a grim reality if you choose to look at it grimly. But reality it is, and must be faced as such, realistically. Personally, however, I like being a woman. I think that probably the vast majority of the human race likes it this way too. Lin Yutang somewhere remarks that there is an inherent inequality between a 40-year-old woman and a 40-year-old man. Certainly there is an inherent *difference* and one that obtains from the cradle to the grave and that no political entity, however omnipotent, can eradicate. If legislation is realistic and promotes the common good, it must recognize these differences. Most of the gains made by modern governments have been along the line of recognizing this difference and legislating accordingly. Western society has seen the practical exit of the

family, the neighborhood and the church as effective instruments of social control. It has seen these controls thrust into the hands of a political authority and clumsily, haltingly wielded by the various governments. It would be nothing less than a calamity were our Federal Government to enter as a novice into this field and destroy what little has been so laboriously and gloriously achieved in the various states, often enough if not usually spearheaded by women, *e.g.*, Jane Addams, Lillian Wald, Florence Kelly and others. It would require more effort but in deference to what remains of sovereignty in the various states, and practical present social and economic realities, and it would be more effective to work within the present framework of each state for the improvements that the social climate therein would favor.

The Senate Committee's favorable report on the amendment states that "the Amendment does not deprive any State of its exclusive dominion over local public policy". What purpose, then, would it achieve? The assurance sounds as familiar and as deceptive as that given to Little Red Riding Hood in the light of our past experiences with federal expansion.

What I should like to see generally accomplished would be the practice of paying equally men and women for equal work. (The Taft-Hartley Act could not be more confused, so such an amendment could be attached to it.) This is the real social need. It would reduce the employment of women? Perhaps, and reduce the present exploitation of women. Certainly employers who had to pay women the same wage would more generally employ men. This would reduce beneficially the number of women employed in times of a plentiful labor supply and reduce consequently the number of households supported by the wife instead of the husband in days of economic depression. Most pertinently, however, this practice would justly pay the wage earned to the worker herself and reduce her employer's margin of benefit which presently he derives from her sex-disadvantage, a disadvantage which would be immeasurably increased were our present health and welfare laws repealed, meager though they are. Their inadequacies should rather be supplemented, more states should adopt the proved practices of the pioneers in social legislation. Many, many cultures present a pattern in which women do substantially all labor for the group and in addition minister to their idle and mostly decorative lords and masters. In some way there is an equivalent of Gresham's law operating on the labor market. As bad money drives out good, so woman's labor tends to drive out male workers. Where his wife, mother or daughter, or all of them, maintain him, or if sufficient productive labor for the society is supplied by women (an eventuation not too difficult to imagine with labor-saving devices, machinery, etc., that bring motions down within her physical competence), well, why should the Big Chief work? It can't happen here? We hope not, but an "Equal Rights" Amendment is a step in that direction. Would that there were some way of filling the citizenship of the ladies up to the very brim without sacrificing what is essentially our country's government, for each one of us that one of the forty-eight states in which we live, which still clings desperately to a rapidly diminishing measure of sovereignty, and a Federal Government, possessed of such powers as the states have given to it, oftentimes reluctantly.

The foregoing has been an attempt to evaluate an expressed plea for an Equal Rights Amendment to our Federal Constitution and in turn to oppose both the plea and the cause for which it has been entered. There is a very serious aspect to the proposal. On the surface the proposal may seem harmless, or at worst, silly. But harmless inanities enacted into law are terribly serious. This is especially true as the tendency in interpretation detaches itself more and more from the tradition of the immutability of natural law and the fundamentally Christian concept of justice. Such an amendment to our Constitution would, by virtue of its very indefiniteness and unrealism, actually further the menaces with which current relativism threatens us.

Standing Committee on Law Lists

■ On April 15, 1952, the Standing Committee on Law Lists issued a certificate to the Legal Directories Publishing Company, 1072 Gayley Avenue, Los Angeles 24, California, for the 1952 Edition of the Kentucky-Tennessee Legal Directory.

Texas Bar Acts on Legal Aid:

"Equal Justice Under Law"

by Cecil E. Burney • of the Texas Bar (Corpus Christi)

■ Above the portals of the Supreme Court of the United States is inscribed the promise of America, "Equal Justice Under Law".

To the lawyers of this country falls the responsibility for fulfilling that promise, for without legal assistance "equal justice under law" becomes an empty phrase.

In the days when the sundial measured time and men moved slowly and with deliberation, the laws were few and fairly simple. In this complex age, laws, rules and regulations reach into the homes and daily activities of everyone, from the big industrialist seeking to expand his operations to the farmer preparing to plant his coming crop. And so numerous have the laws become, so technical the rules and regulations, that "equal justice under law" can best be obtained by the man who has access to the services of a lawyer.

Organized legal aid service is the lawyers' answer to the promise.

For some time the legal profession has realized that it must assure legal assistance to the millions who cannot afford it. Their reasons for accepting the responsibility of extending free legal assistance to those who require it are not wholly philanthropic. There are numerous ways in which a sound legal aid program is of value to the lawyer, not the least of which is the fact that the service is so essential to the maintenance of equal justice that unless we are willing to provide the service, the Federal Government may well be called upon to meet the need through a program of socialized law.

Among other reasons which should be fully as compelling are the following:

(a.) Since the lawyers hold exclusive "franchises" or "licenses" to provide legal service, they owe a responsibility to the public.

(b.) Such a program provides an avenue of sound public relations in a day when much criticism is leveled at our profession.

(c.) Not only does it fail to deprive the lawyer of business, but such a plan would, in fact, serve to relieve him of an undue burden of free service.

Texas Lawyers Have Acted

Because Texas lawyers fully subscribe to this line of reasoning, they resolved to do something about it and the "Texas Plan" was evolved. Briefly, it covers the following procedural features:

(1.) The initial step was a survey conducted by a nationally recognized public opinion survey to determine the reaction of the public to organized legal aid. We were astonished to find that in a state known for its independence, 33 per cent of our citizens felt that it would be a good thing if the Government, through Social Security, provided the services of lawyers to the public.

(2.) The American Bar Association Committee on Legal Aid and the National Legal Aid Association were contacted and it was found that Emery A. Brownell, executive director of the NLAA and Arthur E. Schoepfer, executive director of the American Bar Association Committee on Legal Aid would be available to come to Texas for the purpose of rendering technical assistance to local associations desiring it.

(3.) Arrangements were completed with the local associations in all cities having a metropolitan population in excess of 100,000 for a general meeting of the Bar at which the subject of legal aid could be discussed by the specialists from the NLAA and the American Bar Association. The meetings were well publicized, notices of the meetings were sent to all lawyers in the community, telephone committees were organized, and the State Bar sent a letter to each member stressing the importance of the subject and urging attendance.

(4.) Invitations also were extended to civic leaders and to representatives of community chests, social welfare agencies, the press and radio to attend the meetings. Ar-

rangements likewise were made for press and radio interviews.

(5.) Special meetings of the local boards of directors and legal aid committees were arranged, at which time the NLAA and American Bar Association representatives outlined definite programs for the particular city involved and a plan of work was agreed upon.

(6.) Questionnaires were forwarded to all local bar associations not visited during the legal aid tour to determine what form of legal aid was being rendered in the community. Follow-ups have been arranged to provide aid and assistance to those communities which expressed interest. Included in the assistance tendered the local associations by the State Bar were speakers for local Bar meetings, pamphlets for distribution to lawyers and to community chests, organizational handbooks, news releases concerning the program, radio transcriptions and forms for legal aid office use.

Local Lawyers Are Willing To Discharge Responsibility

The Texas legal aid tour, which covered more than 2,000 miles, has definitely proved that local lawyers are willing to discharge their professional responsibility in this field when they are able to obtain factual information concerning the need and a practical, workable plan for adequately meeting the need.

Much of the success of the undertaking depends upon the amount of preliminary planning devoted to the project. It is not enough to extend an invitation to the American Bar Association and the NLAA to send their representatives into your state if the desired result is to be obtained. Leaders of the Bar on both the state and local levels must actively participate. Mr. Brownell and Mr. Schoepfer are first-class artisans in this field and they can be depended upon to present all the facts in a most acceptable manner.

Texas lawyers are taking time to carry to a successful conclusion that which they have begun. Bar associations desiring a project that will unite the membership and at the same time provide good public relations should consider this program of providing "equal justice under law" through legal assistance to those unable to afford it. It will take time but the rewards may well include the preservation of the independence of an honored profession.

All lawyers individually render service to those unable to pay but experience has proved that this cannot meet the full need. Unless the service is firmly established on a sound basis we cannot be heard to complain that the service is being otherwise provided.

Together, let us Take Time!

Yellowstone Regional Meeting

■ The American Bar Association Regional Meeting at Yellowstone National Park, June 17-20, is completely programmed. Announcements and invitations have gone to all members of the Colorado, Idaho, Montana, Oregon, Utah and Wyoming Bar Associations from the Regional Meeting Director, W. J. Jameson, Electric Building, Billings, Montana. At 3:00 P.M., June 17, under the official aegis of President Howard L. Barkdull, the guests will be welcomed by E. A. Peterson, President of the Montana Bar Association, A. Sherman Christenson, President of the Utah State Bar and Governor Frank A. Barrett of Wyoming.

The institutes will be on Legal Draftsmanship, Taxation, Trial Tactics and Oil and Gas Law. The following Sections will hold meetings: Taxation, Bar Activities, Junior Bar Conference, Labor Law, Mineral Law, Insurance Law, Judicial Administration and Administrative Law. Some of the expected speakers will be Howard L. Barkdull, E. Smythe Gambrell, Burt J. Thompson, Richard P. Tinkham, Orie L. Phillips, John D. Randall, Theodore Voorhees, Richard S. Munter, Tracy E. Griffin, Alfred J. Schweppe, Martin J. Dinkelspiel, Alfred P. Murrah, J. E. Hickman, Robert G. Storey, Past Presidents Frank Holman, Cody Fowler and Harold J. Gallagher, Henry R. Luce, Gen. J. Lawton Collins, Campbell C. McLaurin and Robert S. McFarlane. Time will be given work in Unauthorized Practice, Lawyer Referral Service, American Citizenship, Communist Tactics, the Constitutional Amendment on Treaties, the Uniform Commercial Code and Membership. Entertainment will include scenic short hikes and trips by car, bus and horseback, dancing and informal entertainment each evening, fishing and boat rides, a production of Gilbert and Sullivan's *Trial by Jury* and a trip through the Park after the meeting. Mr. Jameson's office will handle all inquiries and reservations directly.

The events of the Louisville Regional Meeting cannot be reported until our June issue because of our printing deadline.

THE DEVELOPMENT OF INTERNATIONAL LAW

Richard Young · Editor-in-Charge

Current Business of the World Court

■ The year 1952 promises to be an active one for the International Court of Justice. At the time of writing, five cases involving seven states are pending at The Hague. In three cases the United Kingdom is a party, thus maintaining its position as the state which has appeared most frequently in litigation before the Court (five times altogether since 1947). France is a party to two cases, and Greece, Guatemala, Iran, Liechtenstein, and the United States to one each. For the four states last mentioned, the current cases mark their first appearance as litigants before the Court.

The five cases are briefly reviewed below, in the chronological order in which they were filed.

Morocco Case

On October 28, 1950, France instituted proceedings against the United States for an adjudication of the rights of American nationals in the French Zone of Morocco. Jurisdiction of the Court was based on the prior declarations of each Government accepting the Court's compulsory jurisdiction in certain classes of cases, of which this was not disputed to be one. The rights in question depend on the interpretation and effect on each other of a number of treaties and agreements going back ultimately to a treaty of 1836 between the United States and the Sultan of Morocco.[1]

In June, 1951, the United States entered a preliminary objection, seeking clarification of the role of the French Government in bringing the case: whether it was acting in its own behalf or in behalf of the State of Morocco or in behalf of both. A French statement of October 6, 1951, resolved this difficulty by declaring that France was acting both for itself and for Morocco and that the judgment of the Court would be binding on both. The proceedings on the merits were then resumed in accordance with an order fixing time limits for the further written submissions of the parties. The order called for the presentation of the United States' countermemorial by December 20, 1951; of the French reply by February 15, 1952; and of the United States' rejoinder by April 11, 1952. It may be anticipated that oral proceedings will follow sometime during the summer and that judgment will be given not long after their completion.

Ambatielos Case

The *Ambatielos Case* between Greece and the United Kingdom was begun by a Greek application of April 9, 1951. The application alleged injury to Ambatielos, a Greek national, because of the failure of the British Government to deliver ships to him in accordance with the terms of a contract made in 1919. It was further claimed that Ambatielos had sought redress in the British courts and had there suffered a denial of justice, contrary to international law and to the provisions of an Anglo-Greek commercial treaty of 1886. The treaty also provided for arbitration of differences arising under it. A joint declaration at the time of a later commercial treaty in 1926 confirmed these rights, and it was further provided that differences under the later treaty might be submitted by either party to the Permanent Court of International Justice.

The Greek application alleged that the British Government, despite the arbitration clause of the 1886 treaty, had repeatedly declined to go to arbitration during prolonged diplomatic correspondence extending from 1925 to 1940. Greece, claiming that this refusal constituted a contravention of the 1926 treaty, sought a declaration by the Court that arbitration proceedings under the 1886 treaty must be held, within a time limit to be specified by the Court. If the United Kingdom should fail to comply, Greece reserved the right to bring the case before the Court on its merits.

Orders of the Court fixed dates for submission of a Greek memorial and a British countermemorial. Within the period allowed for the latter, the United Kingdom filed a preliminary objection to the Court's jurisdiction. This had the effect of suspending the proceedings on the merits.

Anglo-Iranian Case

The *Anglo-Iranian Oil Company Case* between the United Kingdom and Iran arises from the well-known events of 1951 in which Iran undertook to nationalize the Company's property and business in Iran. The proceeding was instituted by a British application of May 26, 1951, which was based on the theory that the dispute was one falling within the scope of the prior declarations by both Governments recognizing the compulsory jurisdiction of the Court in certain classes of cases.

As a result of developments in Iran, the United Kingdom on June 22, 1951, requested the Court to indicate interim measures of protection for the subject matter of the controversy pending a determination on the merits. Such a discretionary power is granted to the Court under Article 41 of its Statute. The Court, two judges dissenting, made an order indicating such measures on July 5, 1951, after a hearing at which Iran did not appear. The order was not observed by the Iranian Government.

On December 8, 1951, however, the Iranian Government appointed an agent to represent it before the Court; and on February 4, 1952, within an extended time limit

1. The background of this case and the contentions of the respective parties were reviewed in this column in 37 A.B.A.J. 228-229, March, 1951.

granted by the Court, Iran was reported to have filed a statement with the Court, advancing a preliminary objection to the Court's jurisdiction, challenging the British view of the case as one falling within the scope of the two Governments' declarations.

Minquiers and Ecrehos Case

This case, between the United Kingdom and France, is the only one now before the Court involving a territorial question: sovereignty over the islets and rocks in the English Channel comprised in the Minquiers and Ecrehos groups. The two groups lie between Jersey and the French coast, and are for the most part of minuscule dimensions. Their status appears to be significant chiefly in connection with fishery rights in the adjacent waters.

The dispute is also the only one now before the Court by virtue of a special agreement between the parties, rather than through a unilateral application invoking prior acceptance by the parties of the Court's jurisdiction. The agreement, signed on December 29, 1950, was notified to the Court on December 6, 1951; when made, the notification served to institute proceedings. Under the terms of the agreement, the United Kingdom was to lead off with a memorial within three months after the date of notification. This was to be followed within the next three months by a French countermemorial, and then by such other pleadings as the Court might direct. This procedure, which was subsequently confirmed by an order of the Court, differs somewhat from the arrangement usually followed in cases brought under a special agreement, where the ordinary practice is for the parties to exchange their written statements simultaneously.

Nottebohm Case

The *Nottebohm Case*, between Liechtenstein and Guatemala, is the most recent case to be brought before the Court. It was instituted on December 17, 1951, by a Liechtenstein application which invoked the earlier declarations by both parties accepting the compulsory jurisdiction of the Court.

The application alleged that Nottebohm, a German by birth but long resident in Guatemala, had acquired Liechtenstein nationality by naturalization in 1939; that he had been wrongfully arrested by Guatemala in 1943 and turned over to the authorities of the United States, where he had been interned; and that his property in Guatemala, said to be worth about $1,500,000, had been wrongfully seized and sequestered. It was further asserted that Nottebohm had been unable to obtain redress through normal channels and that diplomatic intervention by the Government of Liechtenstein had also been unavailing. The Court was asked to pronounce that Guatemala in its dealings with Nottebohm had acted contrary to international law; that Nottebohm's property should be restored insofar as possible; and that Nottebohm should be indemnified, in an amount to be determined by the Court, for loss and damage to his property and for his detention and expulsion.

Written proceedings in the case are now under way. It is reported that the Liechtenstein Government has been granted until June, 1952, to submit its memorial, and the Guatemalan Government until September, 1952, to submit its countermemorial. The further course of the proceedings is reserved for later decision.

It is noteworthy that of the five cases just described, all except one involve, in one form or another, claims on behalf of nationals. These raise questions on such points as denial of justice in national courts, treaty rights of aliens, the effect of naturalization, the seizure of foreign-owned property, and the measure of damages for such seizure if found to be wrongful. One may anticipate that out of the Court's deliberations in these cases there will arise some clarification and development of international jurisprudence on these topics.

The Value of Youth at the Bar

■ When a young graduate of a law school enters into a contract for a year's employment in an office at a certain salary for each month, he obtains a right to his monthly salary by finishing his first month's service, irrespective of his future failure to perform the remainder of the contract, yet it is obvious that his services at the beginning of the term are of slight value.
—3 *Williston on Contracts* (Rev. ed.) page 2455, n. 14

AMERICAN BAR ASSOCIATION
Journal

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Students in Law Schools, $3 a year.
Price for a single copy, 75 cents; to members, 50 cents.
Members of the American Law Student Association, $1.50 a year.

EDITORIAL OFFICE

1140 North Dearborn Street.....Chicago 10, Ill.

■ *St. Ives' Cat*

Lawyers are not generally classed with the saints. Yet, *mirabile dictu*, among the saints is the canonized advocate of the poor, the patron saint of lawyers—St. Ives! But the popular conscience protests against this almost incredible intrusion. The people sing these lines at St. Ives' Festival:

Advocatus et non latro
Res miranda populo.

Baring-Gould in his *Lives of the Saints* tells us that St. Ives is usually represented with a cat as his symbol. Why? Because "The cat being regarded as in some sort symbolizing a lawyer, who watches for his prey, darts on it at the proper moment with alacrity, and when he has got his victim, delights to play with him, but never lets him escape from his clutches". If this is the popular conception of the lawyer, we should examine for a moment our feline counterpart!

It may be true that, like cats, there are too many lawyers. Occasionally we do fight like Kilkenny cats. When we win a close case we may grin like a Cheshire. If we put over a point we did not expect to, we may even look like the cat who swallowed the canary. If we lose a hard fought case, more likely than not we'll look like something the cat dragged in! Then, too, we'll occasionally find ourselves up a tree—chased there by client, court or brother lawyer. But our hair stands on end and we get our backs up when they try to use us as a cat's paw.

Cat-lovers will tell you cats are more intelligent than dogs—that makes *us* purr! They are certainly more patient, more independent, probably more self-respecting. They are a model for lawyers in cleanliness—always presenting a newly washed face to the public. They go quietly about their work without barking and yapping. Beneath their velvet paws are sharp claws—*caveat!* And a cat, like Coke, may look at a king—defiantly. We are not easily downed—perhaps we too have nine lives. And the best lawyer like the agile cat can always land on his feet.

It is not amisss to observe that the King of Beasts is a member of the cat family. We lawyers need not resent the cat as our symbol. Both of us have an ancient and respected lineage. The great French Chancellor d'Aguesseau described the order of advocates "as noble as virtue, as necessary as justice". Why shouldn't we purr? Without being catty at all, we can say that no profession requires more probity, more honor, more candor or more decency than the law does. It is up to each of us to keep it that way.

■ *"If Youth Only Knew, If Age Only Could"*

By a recent departure, the legal profession in America has gone far to eliminate from its ranks the basis for that age-old lament. This issue of the JOURNAL (on page 369) carries in full the Report of the Survey of the Legal Profession on the American Law Student Association by James M. Spiro, formerly Director of the American Bar Association's Law Student Program. The report properly emphasizes the aid that law students are receiving from members of the Bar through the medium of the American Law Student Association. That is only half the story, however. The young men and women who have dedicated themselves to the profession have strength and idealism that the Bar needs now. Unfortunately, but almost inevitably, youth's strength and idealism become dissipated in the acquisition of worldly wisdom. Those who would have fulfilled the high obligation of the Bar to society in their youth, if they had then known how, are too tired and disillusioned to fulfill it by the time that they have learned how. Those of us who are weary of well doing, however, can renew our power and faith by borrowing the power and faith that these law students will share with us so freely. By all means let us heed their petition that we "present to students the goals and aims of the profession as well as a pattern of integrity and respect which will enable the graduate to more adequately prepare for his chosen profession". Let us at the same time recognize, however, that this is no cry from Macedonia. The boys and girls who utter it are themselves apostles of the spirit of the law who will contribute just as much as we when, in the common endeavor of us all to establish the reign of justice under law, we add our experience to their inspired vigor.

Editorial From a Member of Our ADVISORY BOARD

■ *Federal-State Relations Under the Taft-Hartley Law*

What are the proper areas of federal and state control in labor relations? This has perplexed courts and lawyers since the passage of the Wagner Act in 1935, the adoption of state laws patterned after it, and more especially since the enactment of state statutes of a wider scope, such as the Wisconsin Peace Act of 1939. The passage of the Taft-Hartley Law instead of clearing has accentuated the problem. While the last-named Act was probably intended to continue the policy of the Wagner Act to establish and maintain a unified national policy in regard to the prevention of unfair labor practices for industries which substantially affect interstate commerce, it is also to be gathered from various provisions in the Act itself and the meager legislative history that Congress intended to leave to the states more, rather than less, control than they had enjoyed under the previous law. A colloquy between Congressman Kersten of Wisconsin and Chairman Hartley (93 *Congressional Record* 6540, House, June 4, 1947) certainly bears out this view. Said Mr. Kersten: "We are very anxious that disputes be settled at the state level in so far as it is possible." Replied Mr. Hartley: "That is the sense of the language of the bill and of the report."

A late decision (October 18, 1951) by the Court of Appeals of New York (20 *Labor Cases* § 66,609) points up the urgency of the conflict, with its majority and sharply dissenting opinions. Recent decisions of the United States Supreme Court are familiar to most lawyers: *Amalgamated Association of Street, Electric Railway and Motor Coach Employees* v. *Wisconsin Employment Relations Board*, 340 U. S. 383; *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U. S. 953; *La Crosse Telephone Corporation* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Company* v. *New York State Labor Board*, 330 U. S. 767; *Algoma Plywood & Veneer Company* v. *Wisconsin Employment Relations Board*, 336 U. S. 301.

What does this mean in terms of the American Bar Association and its Sections and Committees? Why, clearly, that it and they should lead in studying the problems involved in formulating statutory language that will clear up the muddle, and then lend their weight and influence to the adoption of the necessary amendments to the Taft-Hartley Law.

CHARLES H. WOODS

University of Arizona
Tucson, Arizona

Each month a member of the *Journal's* Advisory Board is asked to contribute an editorial signed by him. In this way we hope to be able to reflect the many facets of opinion, and the active interests, of lawyers, judges and teachers of law, in all parts of the United States. The views expressed by each contributor are his own, and are not necessarily those of the Advisory Board or the Board of Editors.

Proposed Amendment to the By-Laws of the Association

■ Notice is hereby given that Arthur E. Farmer, of New York, New York, George W. Bains, of Washington, D. C., Stephen F. Chadwick, of Seattle, Washington, Harry W. Colmery, of Topeka, Kansas, Richard K. Gandy, of Santa Monica, California, William H. King, Jr., of Chicago, Illinois, and George A. Spiegelberg, of New York, New York, members of the Association, have filed with the Secretary of the Association the following amendments to the By-Laws of the Association:

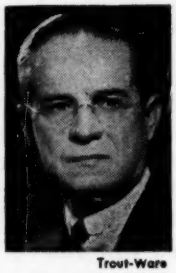
(1) Amend Article X, Section 7, of the By-Laws of the Association, by adding a new sub-section to follow present sub-section (q) as follows:

(r) *Military Justice.* This Committee shall have jurisdiction of all questions in the field of military justice.

(2) Reletter present sub-sections (r) to (aa) inclusive of Article X, Section 7, so that they will be lettered consecutively (s) to (bb) inclusive.

JOSEPH D. STECHER
Secretary

THE PRESIDENT'S PAGE



Trout-Ware

HOWARD L. BARKDULL

New Headquarters Building

■ An event of lasting importance to the Association occurred on Saturday, February 23, when a Joint Conference was held at Chicago, immediately preceding the sessions of the House of Delegates on Monday and Tuesday. This Conference was attended by the members of the Board of Governors, the Board of Directors of American Bar Association Endowment and representatives of various committees including Special Gifts, Ways and Means, Scope and Correlation, Headquarters Site, Rules and Calendar and a Special Committee of the House.

At the conclusion of the day's consideration of the problem of a new Headquarters Building and other proposed facilities connected with it, a resolution was adopted, introduced by two former Presidents of the Association, George Maurice Morris and Cody Fowler. While the net result was the creation of one more Committee, I am impressed by the fact that it has really amalgamated all groups previously working on the Headquarters project. In the adoption of this resolution proposed by the two past Presidents, the Conference of February 23 has performed a service of first importance to the Association, especially by insuring early action. The resolution is printed elsewhere in this issue (see Page 426).

The resolution was adopted by the unanimous vote of the House of Delegates on the Monday following and the President announced the appointment of the other members of the Committee, as follows: from the Budget Committee of the Board of Governors, William W. Evans; from the Standing Committee on Scope and Correlation of Work, James L. Shepherd, Jr.; from the Standing Committee on Ways and Means, W. E. Stanley; from the Special Committee on Special Gifts, Harold J. Gallagher; from the Special Committee on Headquarters Building and Location, James P. Hume; and from the American Bar Association Endowment, Jacob M. Lashly, chosen by Judge Guthrie, President of the Endowment.

This Committee of Seven had its first meeting on the evening of the day of its appointment. The June 1 time limit for its report is so immediate that early action is called for, and the Committee held its second session at Chicago on Saturday, March 22. Real progress was made, in the direction of solving this much-delayed problem, and there is every likelihood that public announcement of a Headquarters site has appeared in the press before you read this May issue of the JOURNAL.

Individual Rights as Affected by National Security

Another important Committee created by the House of Delegates at the Mid-Year Meeting relates to Individual Rights as Affected by National Security, a subject matter of first consequence in present-day America. A special responsibility devolves upon the legal profession when the paramount demands of national security come into conflict with the exercise of the rights of the individual citizen. The new Committee is instructed to make recommendations to bring about the best possible balance between the demands of national security on the one hand and the exercise of the freedom of the individual on the other. The personnel will be announced within the near future.

Disciplinary Procedures

The President was authorized by the Board of Governors and House of Delegates to appoint a Special Committee to study, in co-operation with the Conference of Bar Association Presidents, the formulation of model grievance and disciplinary procedures, to the end that there may be uniform and effective enforcement of standards of conduct prescribed by the Canons of Professional and Judicial Ethics. The creation of this Committee was prompted by numerous suggestions that the Association assert its leadership in an effort to achieve greater uniformity of procedure among the states in this field. It is generally recognized to be a matter of state jurisdiction.

The Board of Governors approved and referred to the same Committee a resolution submitted by the Commission on Organized Crime relative to the investigation of unethical practices. This additional instruction to the new group is "to survey the matter and extent of activities of members of the Bar who foster organized crime either as public officials or as private practitioners, or who engage in other types of unethical practice, and to evaluate the adequacy of existing canons of ethics and grievance procedures for dealing with these individuals".

Schedule of Travel

It has been my privilege to meet with the Brooklyn Bar Association and participate in their interesting discussions; also to assist the members of the Philadelphia Bar Association in the celebration of their 150th anniversary, marked by addresses on behalf of the local, state and national Bar, concluding with

(Continued on page 417)

Books for Lawyers

THE FEAR OF FREEDOM. *By Francis Biddle. New York: Doubleday & Company, Inc. 1951. $3.50. Pages xvii, 263.*

Mr. Biddle's thesis is that attempts to suppress threats to freedom can, and sometimes do, result in the suppression, rather than the preservation, of freedom itself; that freedom, by virtue of its inherent strength and virtue, will triumph over its adversaries without the need of artificial stimulus; and that efforts to gag all opposition to freedom can result in a fear-inspired mass hysteria more dangerous to the cause of freedom than any of the evils against which it is directed could ever be. Coming down to cases, Mr. Biddle believes that we are now in the midst of such a period of hysterical fear; that the symptoms of this situation are the activities of the Dies and McCarran committees, the loyalty programs in our Federal Government, in our educational institutions and elsewhere, and similar activities; that these activities and programs have done far more harm than good; and that unless an end is put to the Communist witchhunt we are in grave danger of losing the very thing we are fighting to preserve, our individual liberty. Mr. Biddle presents his case with force and persuasion and, it must be conceded, with a modicum of truth.

On the other hand, Mr. Biddle speaks as an advocate, not as an analyst. He shows us one side of the coin, but never turns it over to reveal the other. He does not recognize the fact that there is a point at which liberty becomes license, freedom becomes the freedom to destroy our most cherished institutions, and the test of a clear and present danger comes too late to avoid the consequences of that danger. If the enemy would play by our rules, no doubt we could beat them at their own game; but they will not do so. They have demonstrated beyond question that their tactic is to take advantage of the very rights guaranteed them in the interest of freedom to destroy that freedom. By so doing they have left us no alternative but to forestall such action upon their part, in so far as it is consistent with the principles of freedom and democracy to do so. Hospitality is a virtue; but when a man enters your house with a loaded gun in his hand for the avowed purpose of commiting murder, it is foolish to welcome him as a guest.

Mr. Biddle by no means exonerates the American Bar Association from participation in the Communist panic. He cites the resolution adopted by the House of Delegates on February 24, 1948,[1] to the effect "that Communists and those practicing its teachings should be barred from all government service, state and federal", but fails to refer to the earlier proviso of the same resolution designed to limit its scope in the interest of providing safeguards for the individual.[2] He quotes the words of Mr. Frank Holman, then President of the American Bar Association,[3] noting "a growing concern that the threat of Communism to our constitutional form of government is not being adequately met", but overlooks Mr. Holman's reminder that "All lawyers agree that great caution needs to be observed in proceeding, by restrictive legislation or criminal action, against any group which calls itself a political party." He states that "On September 22 (1950) the American Bar Association recommended that lawyers be required to take an oath that they were not Communists, although it was not clear what should be done with them if they answered in the affirmative, and urged President Truman to sign the Communist control bill"; a strange statement in view of the final clause of the resolution referred to,[4] reading "in the event such affidavit reveals that he is or ever has been a member of said Communist Party, or of any such organization, that the appropriate authority promptly and thoroughly investigate the activities and conduct of said member of the Bar to determine his fitness for continuance as an attorney".

In other words, Mr. Biddle has branded the American Bar Association as a participant in a hysterical reaction against the fear of Communism, by calling attention to the action taken by the Association to stem the rising tide of Communism both within and outside the legal profession without mentioning the qualifications to such action invariably accompanying it, designed to safeguard the constitutional rights of individuals. Whether the charges which he brings against other organizations are similarly based it is impossible to determine; but certainly the conclusions which he reaches as to the House Committee on Un-

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1. 73 A.B.A. Rep. 256-257 (1948).

2. "Be it further resolved, that while insisting

(a) that the full protection of the Bill of Rights be accorded to the members of any minority group, including Communists, and

(b) that neither prejudice nor well-founded indignation can justify the infringement of any right secured by the Constitution, and

(c) that the right to advocate improvements and changes in our form of government by legal and peaceful means should not be impaired . . . ."

3. "The President's Page", 35 A.B.A.J. 491-492; June, 1949.

4. 75 A.B.A. Rep. 148-149 (1950). The "Communist control bill" is apparently the Internal Security Act of 1950, c. 1024, 64 Stat. 987 (Sept. 23, 1950, which was approved by a resolution adopted by the American Bar Association, 75 A.B.A. Rep. 149 (1950), but which was passed by the Congress, vetoed by the President, and repassed over his veto before the resolution could be transmitted (see note at citation given above).

American Activities[5] are diametrically opposed to those reached by the American Bar Association's Special Committee To Study Communist Tactics, Strategy and Objectives.[6]

Mr. Biddle would no doubt take this as further evidence of the Association's participation in the general anti-Communist panic. But there is another possible interpretation. The position of the American Bar Association, like that of the Congress and of the American people, is based upon the proposition that a clear and present danger exists which demands immediate and effective action, and that the steps which have been taken to combat that danger are necessary and salutary, so long as the right to individual freedom is respected. Mr. Biddle believes that that danger has been greatly exaggerated, that the degree to which it does exist does not justify the steps which are being taken to combat it, and that those steps are ineffective and themselves transgress the bounds of individual freedom as guaranteed by our constitutional form of government. Which view is the proper one can only be determined at the bar of history, where all such conflicts are ultimately resolved for better or for worse, and from whose decision there can be no appeal.

WALTER P. ARMSTRONG, JR.
Memphis, Tennessee

AN INTRODUCTION TO ADMINISTRATIVE LAW, with Selected Cases. Second Edition. *By James Hart. New York: Appleton-Century-Crofts, Inc. $7.00. Pages xxviii, 819.*

Administrative law owes much to the writings of the great teachers of political science.

Professor James Hart has therefore done a great public service in providing a revised and enlarged second edition of his highly regarded book which, when first published in 1940, was widely acclaimed as the first general book of an introductory character on administrative law that had been published since Professor Frank J. Goodnow, later President of Johns Hopkins University, published his *Principles of the Administrative Law of the United States* in 1905, twelve years after he had published his two volume pioneer book *Comparative Administrative Law* in 1893.

Two epochal events have occurred in administrative law since the first edition of this book was published in 1940.

The Attorney General's Committee on Administrative Procedure in 1941 submitted its monumental report, and as a consequence of that report and of many years agitation in the American Bar Association for a clarification of administrative procedure, Congress in 1946 passed without a dissenting vote the Administrative Procedure Act.

These two milestones in the history of administrative law are discussed throughout Professor Hart's book, and practicing lawyers will be deeply grateful to him for the exhaustiveness with which he has listed and copiously quoted in this edition of his book substantially all the important decisions, casebooks, congressional hearings, federal and state reports, general books, specialized books, symposiums, law review articles and other materials dealing with administrative law.

In his introductory chapter Professor Hart evaluates in a manner particularly interesting to a practicing lawyer the scope of administrative law as affected by constitutional law and by the trial-and-error method involved in judicial opinions.

It is always helpful for the practicing lawyer to know the viewpoint and approach of the teacher of political science toward administrative law.

Traditionally the practicing lawyer tends to favor the judicial review of administrative decisions, but the teacher of political science traditionally tends to favor administrative freedom.

Professor Hart deserves the respect of all his readers for the fairness with which he holds the scales between the competing claims of the practicing lawyer and the teacher of political science.

In every chapter of Professor Hart's book there is quoted or adequately summarized every important decision, article and argument on which the practicing lawyer has been accustomed to rely in support of his inclination toward judicial review, and alongside these there is also quoted or adequately summarized every important decision, article and argument on which teachers of political science have been accustomed to rely in support of their inclination toward administrative freedom.

The exhaustiveness of this compilation of all the important decisions, articles and arguments bearing on this great debate is not excelled in any other book in the literature of administrative law.

Professor Hart quotes excerpts from all the leading decisions on administrative law, and accompanies

5. "If a single cause was responsible for the spread of the doctrine of guilt by association, linked with the growing doubt of the people about the loyalty of their public servants, and the strength of their traditional institutions, I should be tempted to find it in the activities of this committee." (Pages 111-112).

"The committee's activities have helped to create a state of distrust, of prejudice, and of suspicion touching at times on panic." (Page 114).

"The American sense of fair play was constantly shocked by the committee's methods." (Page 116).

"The mischief of the investigation lay in the preposterous methods to which the committee resorted." (Page 131).

"The committee misstated the issues and confused and misled the public. (Page 132).

6. At the Mid-Winter, 1952, meeting of the American Bar Association this committee presented and recommended the adoption of a resolution reading in part as follows:

"Whereas, the Special Committee To Study Communist Tactics, Strategy and Objectives has, since its appointment, observed and studied the work of the House Un-American Activities Committee as evidenced by the official transcripts of testimony adduced at public hearings, based upon which it is our view that the constitutional rights of witnesses have been protected by that congressional committee . . . .

"*Be It Resolved*, that the American Bar Association express its approval of the manner in which the investigations and hearings by the present Committee on Un-American Activities of the House of Representatives and the Subcommittee of the Senate Judiciary Committee on the Internal Security Act are now being conducted and we commend said committees for their continuing inquiry into the activities of the Communist Party, its members and followers, in order to establish a basis for appropriate legislation."

This portion of the recommended resolution was adopted by the House of Delegates on February 25, 1952.

them with gleanings from innumerable books, articles, statements and other materials in which are stated the views of John H. Wigmore, Chief Justice Arthur T. Vanderbilt, Professor (now Justice) Felix Frankfurter, John Dickinson, Dean E. Blythe Stason, Professor Roscoe Pound, Judge Harold M. Stephens, Dean James M. Landis, Robert M. Benjamin, Professor Walter Gellhorn, Professor Ralph F. Fuchs, Professor Kenneth Culp Davis, Professor Thomas Reed Powell, Breck P. McAllister, A. Martin Tollefson, Forrest R. Black, Frederick E. Blachly, Professor Edwin Borchard, Professor J. F. Davison, John A. Fairlie, A. H. Feller, Oliver P. Field, Professor Ernst Freund, Professor William W. Willoughby, Professor James Hart, Noel K. Gregory, Professor Louis L. Jaffe, Dean Wilber G. Katz, Professor Herman Oliphant, C. Sumner Lombinger, Carl McFarland, Ernst Schopflocher, Ashley Sellers, Kenneth C. Sears, Robert A. Maurer, Ralph A. Brown, Robert L. Stern, Frederick P. Lee, Francis X. Welch, and other outstanding authorities on administrative law.

Professor Hart's book is therefore a *vade mecum* to the entire literature of administrative law and a compendium of what is most important in it.

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ECONOMIC EFFECTS OF SECTION 102. *By the Tax Institute, Inc. Princeton, New Jersey: Tax Institute, Inc. 1951. $5.00. Pages xxxiii, 314.*

Economic Effects of Section 102 is a questionnaire and panel investigation of the penalty tax on alleged unreasonable corporate accumulations of profits. Analysis is made of the impact of Section 102 of the Internal Revenue Code on small and closely held corporations. It was found that only too often the fear and uncertainty of the 27½ per cent or the 38½ per cent penalty distort the economic operations of these small corporations because so much depends upon the whimsical reactions of a Treasury official or a court on corporate management's own judgment. The burden is on the corporate taxpayer to establish that its undistributed earnings are "reasonable"—a term which is very elusive.

This plight of the small corporation is aggravated by the recent *immediacy doctrine*, promulgated by the *World Publishing Company* case, 169 F. (2d) 186, which holds that the accumulation must be intended for a program to be implemented within the foreseeable future. If the accumulation is intended to cushion the impacts of nondescript economic reverses in the nonforeseeable future or to finance future growth, this case holds that the taxpayer may be subject to a penalty under Section 102.

The forcing of dividends to escape the impact of Section 102 has resulted in a variety of ill effects on relatively small corporations—retarded expansion, increased borrowings, curtailed operations, failure to provide for contingencies, premature expansion, nonliquidity, failure to fund for replacement, accentuated inflationary and deflationary trends and even precipitated sales, mergers and liquidations.

It seems to the reviewer that too little consideration has been given to the fact that historically small corporations have depended primarily upon their own surplus for growth and expansion as well as for replacements of fully depreciated plant and equipment. Too little thought has also been given to the fact that the backbone of our economic system of free economy has always been the small enterprise and that the menace of Section 102 only accelerates the already too evident concentration of wealth.

The larger corporations by comparison do not encounter the difficulties that the smaller ones do in securing bank and public financing. Consequently, the larger corporations, by comparison, as a general proposition should have much more liberal dividend policies than they do. It is the reviewer's belief that the Treasury is lax in failing to assert Section 102 where, in a publicly held corporation, despite the wide distribution of its stock, a willfully small group of stockholders dictates to its puppet management a conservative dividend policy so as to escape higher surtax rates.

Tax laws are not designed to raise revenue alone; they also regulate and control the national economy. The reviewer therefore believes that it is good for the national welfare to stimulate and to encourage the growth of small corporations by permitting them to determine their own dividend policies, even though that necessitates tapping some other source of taxation to replenish a loss of revenue. Short of such a policy, directors should be apprised of their personal liability to stockholders for the Section 102 penalty for failure to have a "reasonable" dividend policy. *Trico Products Corporation*, 169 F. (2d) 343. Corporate taxpayers should be allowed credit for dividends paid within two and one-half months after the end of the year so that they might have the benefit of their accountants' audits in determining dividend policy. They should also be permitted to relieve themselves of such a tax by a deficiency dividend. Among other proposed legislative changes, to be logical the penalty should be imposed only on the alleged unreasonable portion of the accumulation and not on the entire annual surplus of the year in question. The burden of proof is now on the taxpayer to establish that it did not intend to help individual stockholders escape higher surtaxes or to prove that the accumulation was reasonable. The taxpayer can now avoid the Section 102 impact if it prevails in either effort. It would be more desirable to shift the entire burden to the Commissioner.

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Courts, Departments and Agencies

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Animals . . . statute requiring private humane societies to surrender impounded dogs to educational institutions held valid.

■ *Regents of Univ. of Wis.* v. *Dane County Humane Society et al.*, Wis. Sup. Ct., January 8, 1952, 51 N.W. 2d 56, Brown, J.

This was an action by the Regents of the University of Wisconsin against a private humane society for a declaratory judgment as to the constitutionality of a Wisconsin statute, §174.13 (2), Stats. (1949), requiring humane officers, "who by virtue of deputized authority or contact with a municipality" have custody of unclaimed or unredeemed live dogs, to surrender them to specified educational institutions upon requisition by such institutions. Defendants had refused to turn their impounded dogs over to plaintiff, alleging that §174.13 (2) was not applicable to them because their organization was wholly private, and also, that the section was unconstitutional because it deprived them of their property without due process of law.

The Court held that subsection (5) of §174.13, which was subsequently enacted in 1951, was applicable to defendants. That subsection provides that any humane society refusing to turn over its impounded dogs to the specified educational institutions shall immediately become ineligible for further public assistance and, in addition, such refusal shall constitute grounds for revocation of the organization's corporate charter. This added subsection applied to defendants, the Court declared, regardless of the fact that there existed between them and a municipality no deputized or contract authority. Subsection (5), Justice Brown said, "takes in *any* humane society. It is not limited, as sec. 174.13 (2) is, to those having contract or deputized authority".

The Court then remarked that the disposition of stray dogs is clearly a proper exercise of the police power of the state, and consequently, the state may impose rules and conditions under which the power is to be exercised. The custody of the dogs by defendants did not give the society a perpetual, inalienable property right in the dogs. Pre-eminent authority over the unclaimed dogs is in the state, the Court said, and it is well within the legislative power to take for public purposes unredeemed or unclaimed dogs.

Attorney and Client . . . unemployment insurance . . . lawyers associated with patent law firm who received fees on percentage basis were not rendering services for an "employing unit" within definition of "employment" contained in Illinois Unemployment Compensation Act . . . firm not liable for unemployment compensation taxes.

■ *Wallace et al.* v. *Annunzio, Director of Labor*, Ill. Sup. Ct., January 24, 1952, 103 N. E. 2d 467, Bristow, J.

The sole issue in this case was whether lawyers associated with plaintiffs' patent law firm could be deemed to be rendering services for an "employing unit" within the definition of "employment" contained in the Illinois Unemployment Compensation Act, Ill. Rev. Stat. 1949, chap. 48, par. 218. The Director of Labor had determined that plaintiffs were indebted for unemployment compensation taxes under the Act. However, under the terms of an oral contract existing between plaintiffs and the associates, the associates were required to pay plaintiffs one-third of all fees received from their own cases, and, on work referred by the firm, the associates were credited on the firm books with 45 per cent of the fee, as and when it was collected. This 45 per cent credit was then used to pay the associates' proportionate share of the rent, stenographic and other services.

Referring to the shadowy distinction between what is clearly an employer-employee relationship and one which is clearly one of independent entrepreneurial dealing, the Court in this case held that the relationship between the firm partners and their associates was most akin to a series of joint enterprises in which the parties were all principals, sharing the profits and losses in case the fees were not paid. Accordingly, the Court concluded that the associates were not rendering services for an "employing unit" within the meaning of the Act. Also, it was pointed out that this conclusion is consistent with the purpose of the Act since it was designed to compensate individuals who depend upon wages for their livelihood, rather than to compensate a group of professional men who "are not ordinarily beset with the hazards of unemployment to the degree that wage earners are".

In further support of its decision the Court said that even if the associates were performing services for "an employing unit" they still would be outside the protection of the Act since their services come within three exceptions to the Act. These exceptions state that in order not to be deemed an "employee", an individual must be free from "control" over the performance of his services, the services must be performed outside the enterprise's usual place of business and the individual must be engaged in an independently estab-

lished trade or profession. The Court said that these tests were met in this case since there was no arrangement for the amount of time to be devoted by the associates to firm cases, the services were performed by the associates in their own offices and they were licensed attorneys.

Civil Service . . . Administrative Procedure Act . . . hearing examiners . . . regulations, promulgated by Civil Service Commission, classifying hearing examiners within a given agency, governing promotions within an agency from one grade to another, requiring rotation of cases within an agency among examiners of the same grade in accordance with a prior estimate of the difficulty and importance of each case and authorizing separation of hearing examiners by a reduction in force, held invalid as contrary to §11 of the Administrative Procedure Act.

■ *Federal Trial Examiners Conference et al.* v. *Ramspeck et al.*, U.S. D.C., Dist. of Col., March 4, 1952, Laws, Ch. J.

This was an action against the Civil Service Commission and others brought by a group of hearing examiners. Plaintiffs sought to have certain regulations promulgated by the Commission, pursuant to the rule-making authority granted it by §11 of the Administrative Procedure Act, declared invalid. The Court said that the regulations under attack provided, in substance, as follows: "(a) When a vacancy occurs in a hearing examiner position, the agency in which the vacancy exists may choose the means by which it is filled, by promotion of one of the agency's hearing examiners or by appointment, promotion, transfer or reassignment of a non-hearing examiner. . . . (b) All hearing examiners are classified into Civil Service salary grades GS-11 through GS-15. Insofar as practicable, examiners are to be assigned in rotation to cases of the level of difficulty and importance that are normally assigned to positions of the salary grades they hold . . . . (c) Agencies are authorized to separate hearing examiners by way of reduction in force in much the same manner as other employees . . . ." The case was submitted on motions for summary judgment filed by both plaintiffs and defendants.

Emphasizing that "one of the major purposes of the Act was to make hearing examiners independent of pressure from agencies whose cases they pass upon", the Court held the regulations invalid. The opinion stated: "The legislative plan of Section 11 of the Act contemplates no distinctions between hearing examiners in any given agency based on the difficulty and importance of the work they perform." The Commission had argued that its classification of hearing examiners was necessitated by the Classification Act of 1949, which §11 makes applicable to hearing examiners' compensation, and that this requirement was recognized by the provision of §11 directing rotation of cases "insofar as practicable". However, the Court replied that the Classification Act merely fixed the formula for determining examiners' compensation in case the work assigned to examiners of a particular agency varies in difficulty and importance from that assigned to examiners in another agency. The provision requiring rotation "insofar as practicable" relates to exigencies arising in the administration of business, such as illness, disqualification or other reasons, Chief Judge Laws said. Thus, the Court concluded that the Commission is without authority "to classify hearing examiners within any given agency into Grades GS-11 through GS-15, and lacking such authority, it is without authority to promulgate regulations governing promotions within an agency from one such grade to another. It also follows that the Commission lacks authority to require rotation of cases within an agency only among examiners of the same grade in accordance with a prior estimate of the difficulty and importance of each case."

The commission's regulations had provided for the assignment of cases to examiners on the basis of an advance estimate of whether the case to be assigned is "moderately difficult and important", difficult and important", "unusually difficult and important", "exceedingly difficult and important", or "exceptionally difficult and important". However Chief Justice Laws said that these criteria were vague and lacked objectivity since "no rational distinction" could be drawn between "extremely" complex legal questions and "exceptionally" complex legal questions.

The Court also found that the provisions of the regulations authorizing separation of hearing examiners by reductions in force violated the Act since the Act permits removal of examiners "only for good cause established after hearing and upon the record thereof".

Constitutional Law . . . Federal Regulation of Lobbying Act . . . sections of Act requiring all persons whose principal purpose is to influence congressional legislation, and who solicit money for that purpose, to report such contributions to the Clerk of the House of Representatives held unconstitutional as being too vague and indefinite . . . section prescribing criminal penalties deprived persons convicted under the Act of their constitutional rights of free speech and to petition Congress.

■ *National Assn. of Manufacturers of the United States of America and Miller* v. *McGrath*, U.S.D.C., Dist. of Col., March 17, 1952, Holtzoff, D. J.

This action was brought by the National Association of Manufacturers and one of its officers against the Attorney General of the United States to enjoin him from instituting prosecutions against them for violations of the Federal Regulation of Lobbying Act, Act of August 2, 1946, §§302-311, 2 USC §§261-270. The Court, summarizing, said that the parts of the Act involved in this action provide that "all persons, except political committees, who directly or indirectly solicit, collect, or receive money to be used principally to aid, or whose principal purpose is to aid in the passage or defeat of any legislation by the Congress of

the United States; or to influence, directly or indirectly, the passage or defeat of legislation by the Congress of the United States, are required to keep a detailed and exact account of contributions and expenditures with receipted bills, and to file with the Clerk of the House of Representatives quarterly statements listing contributions and expenditures (Secs. 303-307)".

With the observation that "It is a well established principle that a criminal statute must define the crime with sufficient precision and formulate an ascertainable standard of guilt, in order that any person may be able to determine whether any action, or failure to act, is prohibited", the Court took up the question of whether the pertinent portions of the statute are unconstitutional. Judge Holtzoff, writing the Court's opinion, specifically questioned what was meant by the clause, "to influence directly or indirectly, the passage or defeat of any legislation by the Congress". This influence, he said, could be through communication with committees or members of Congress, causing other persons to do so, influencing public opinion by literature, speeches, advertisements or influencing others to do so. It might, he held, "cover any one of a multitude of undefined activities" and "no one can foretell how far the meaning of this phrase may be carried". Judge Holtzoff concluded that "Sections 303 to 307, inclusive, are invalid as contravening the due process clause of the Fifth Amendment in failing to define the offense with sufficient precision and to set forth an ascertainable standard of guilt."

Section 310 of the Act, which relates to penalties, was also held unconstitutional as violating the First Amendment's guarantees of free speech and the right of the people to assemble peaceably and to petition the Government for redress of grievances. That section made violations of the Act punishable by a fine up to $5,000, a jail sentence up to one year, or both. Any person so convicted who within three years tried to influence legislation or appeared before congressional committees could be punished by imprisonment up to five years or a $10,000 fine. "The penalty provision", the Court said, "manifestly deprives a person convicted of violating the statute, of his constitutional right of freedom of speech and his constitutional right to petition the legislative branch of the Government . . . . A person convicted of a crime may not for that reason be stripped of his constitutional privileges."

However, the Court held that §308 of the Act is severable from §§303 to 307 and did not rule as to its validity. That section compels individual lobbyists to register with the House and Senate clerks and to file quarterly reports.

The opinion was signed by Circuit Judge Miller, District Judge Schweinhaut and District Judge Holtzoff.

Crimes . . . Soviet espionage . . . espionage convictions for transmitting secret information relating to the national defense of the United States upheld . . . death sentences not unconstitutional as being "cruel and unusual" punishment prohibited by Eighth Amendment . . . federal courts of appeals have no power to reduce sentences which are within limits allowed by a constitutional statute.

■ *U.S.* v. *Julius and Ethel Rosenberg and Sobell*, C.A. 2d, February 25, 1952, Frank, C.J.

In the trial court, defendants were convicted of conspiring between 1944 and 1950 to violate 50 USC 32 by communicating to the Soviet Union information relating to the defense of the United States. Defendants Julius and Ethel Rosenberg, who were sentenced to death, were the center of a conspiracy that involved obtaining secret atom bomb information from Mrs. Rosenberg's brother, Greenglass, who was a sergeant in the Army assigned to the Los Alamos project in New Mexico. This information was then turned over to a representative of the Soviet Union. At the trial Greenglass and his wife testified against the Rosenbergs.

Affirming the trial court's judgments, Judge Frank, at the beginning of the Court's opinion, wrote: "Since two of the defendants must be put to death if the judgments stand, it goes without saying that we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted on this appeal." Judge Frank emphasized that under 50 USC 32 it is a crime to give secret information to any foreign nation, whether friend or foe. Thus, contrary to defendants' contention, the trial judge properly instructed the jury that "whether the Union of Soviet Socialist Republics was an ally or friendly nation during the period of the alleged conspiracy is immaterial, and you are not to consider that at all in your deliberations". He also rejected the contentions that the statute was unconstitutional because of its vagueness and that "the communication to a foreign government of secret material connected with the national defense" is "included within the area of First-Amendment protected free speech".

Defendants further charged that the trial judge behaved improperly so as to deny them a fair trial. It was alleged that he took too active a part in the trial process by his questioning of witnesses, which served, *inter alia*, to emphasize key points of the Government's case and to arouse hostility towards defendants. However, after carefully examining the incidents cited by defendants, the Court said that the judge's questions were for the purpose of clarifying the facts of the case, and "We think the judge stayed well inside the discretion allowed him".

As for the defense contentions that it was incompetent for the Government to introduce evidence that defendants preferred the Russian social and economic organization to ours, and that they were members of the Communist Party, Judge Frank answered: "We think the evidence

possessed relevance. An American's devotion to another country's welfare cannot of course constitute proof that he has spied for that other country. But one may reasonably infer that he is more likely to spy for it than other Americans not similarly devoted."

Defendant Sobell, who was sentenced to thirty years' imprisonment, in his appeal contended that his trial should have been severed from that of the Rosenbergs because two conspiracies had been charged, and he was accused of taking part in only one of them. The evidence indicated that he had had nothing to do with obtaining atomic information from Los Alamos, but only that he had conspired with the Rosenbergs to send abroad certain kinds of military engineering and fire control information. He contended that going to trial with the Rosenbergs was highly prejudicial to his case. Judge Frank said that a majority of the Court had concluded that there was a single unified purpose of the two conspiracies; the "common end" being the transmission to the Soviet Union of any and all information relating to the national defense. However, the writer of the opinion disagreed, thinking that there were errors requiring that Sobell be given a new trial.

Discussing the imposition of the death sentences, Judge Frank noted that the statute under which the Rosenbergs were convicted provides that whoever violates the pertinent subsection "in time of war shall be punished by death or by imprisonment for not more than thirty years". Defendants argued that the Court had the power and duty to order their sentences reduced because they violated the Eighth Amendment of the Constitution, which forbids "cruel and unusual punishment". However, the Court, in its opinion, referred to the sixty years of federal precedents holding that an appellate court has no power to modify a sentence which is within the limits allowed by a constitutional statute. Some state courts, Judge Frank explained, find their authority to revise sentences in statutes conferring power to "affirm, modify or reverse" judgments on appeal. An identical power is conferred upon federal courts of appeals, but Judge Frank believes that in view of the long line of precedent denying such authority the Supreme Court alone must indicate that a contrary conclusion is proper. The opinion concluded by stating: "We must, then, consider the case as one in which death sentences have been imposed on Americans who conspired to pass secret information to Russia, not only during 1944-1945, but also during the 'cold war'. Assuming the applicability of the community-attitude test proposed by these defendants, it is impossible to say that the community is shocked and outraged by such sentences resting on such facts. In applying the test, it is necessary to treat as immaterial the sentences given (or not given) to the other conspirators, and also to disregard what sentences this court would have imposed or what other trial judges have done in other espionage or in treason cases. For such matters do not adequately reflect the prevailing mood of the public. In short, it cannot be held that these sentences are unconstitutional."

Elections . . . political parties' primaries . . . oath prescribed by State Democratic Executive Committee requiring prospective electors to pledge their support to Democratic National Convention's presidential nominee invalidated.

▪ *Ray, Chairman State Democratic Executive Committee of Alabama* v. *Blair*, Ala. Sup. Ct., February 29, 1952, 57 So. 2d 395, Livingston, Ch. J.

This was an appeal by the Chairman of the Alabama Democratic Executive Committee from a lower court's order awarding appellee a writ of mandamus directing the Chairman to certify appellee's name as a candidate for presidential elector in the Democratic Party's May primary election. In January, 1952, the Executive Committee had adopted a resolution requiring prospective electors to pledge their support to the "nominees of the National Convention of the Democratic Party for president and vice-president of the United States". Appellee, in his declaration of candidacy, had struck out the quoted portion of the pledge and inserted a provision that he would not cast an electoral vote for Harry S. Truman or any other candidate who advocates the "Truman-Humphrey Civil Rights Program". The Chairman refused to certify him as a candidate.

The principal question on appeal, the Court said, was "whether one who offers to become a candidate for nomination in the May primary as a Democratic candidate in the November election for the office of an elector, provided for in the Twelfth Amendment to the United States Constitution, must take an oath as a condition to becoming such a candidate, as prescribed by the State Democratic Executive Committee, that he will aid and support the nominees of the National Convention of the Democratic Party for president and vice-president of the United States". Chief Justice Livingston, writing for the majority of the Court, first observed that "The question is a federal one, and there has been no authoritative pronouncement as to it." However, he held that "the plain meaning" of the Twelfth Amendment requires that electors be free to exercise their judgment in respect to voting for a president and vice president and affirmed the judgment of the lower court. Referring to the fact that the electors elected to the college have usually voted in accordance with their party's wishes, he nevertheless did not believe that the Twelfth Amendment contemplated a merely formal method of party voting. He added that "As to whether or not the Twelfth Amendment. . . is outmoded and should be changed is not for the courts to say".

Justices Brown and Simpson dissented. They pointed out that §347, Title 17, Code of 1940, provides that any person desiring to submit his name to the voters in a primary election shall do so "in the form prescribed by the governing body of the party". Furthermore, they argued that appellee is not at present a presidential elector within the ambit of the Twelfth Amendment, but was merely asserting a right to become a candidate in a Democratic Party primary. Conceding that a presidential elector has the right of free choice in the college, they contended that the Amendment does not give a candidate a right "to become an elector via any particular political party route unless he meets the qualifications prescribed by the party".

[On April 3, 1952, the United States Supreme Court, on writ of certiorari, reversed the judgment of the Alabama Supreme Court and remanded the case for further proceedings. The *per curiam* opinion was announced by Chief Justice Vinson. Mr. Justice Douglas and Mr. Justice Jackson dissented. Mr. Justice Black and Mr. Justice Frankfurter did not participate.]

Federal Food and Drug Act . . . inspections . . . section of Act making it a crime for owner of food processing factory to refuse inspector permission to enter and inspect his factory held ineffective and made nugatory by section authorizing such inspection only after inspector has obtained owner's permission.

■ *Cardiff* v. *United States,* C.A. 9th, February 13, 1952, Denman, C. J.

This was an appeal from a judgment convicting defendant of violating §331 (f) of the Food and Drug Act, 21 USC, by his refusal to permit an inspector to enter and inspect a food processing plant of which he was manager. Defendant contended that the District Court had misconstrued the two applicable sections of the Act, §331 (f) and §374, since §331 (f) prohibits the refusal to permit entry or inspection as authorized by §374, but §374 states that such entry and inspection can be made only at "reasonable times" after the inspector has first requested and obtained permission of the owner, operator or custodian. In addition, §333 (a) of the Act states that any person violating §331 shall be guilty of a misdemeanor for the first offense and a second offense is made a felony.

The Government argued that the two sections should be construed to mean that "while under 374 the inspector is to make entries and inspection *only* after requesting and obtaining permission of the owner, operator, or custodian, section 331 (f) makes it a crime if the inspector's request is refused". It contended that if the power to inspect food plants without permission of the owner was denied, the enforcement of the law would be "hamstrung". However, the Court ruled that "Such a roundabout and unreasonable construction makes an absurdity of the requirements of the inspector of 'obtaining permission.' It would make nugatory instead of giving effect to the words, 'after first making request and obtaining permission,' etc." The Food Administrator's remedy, the Court said, is to obtain a congressional amendment to the Act. The judgment was reversed and the District Court instructed to enter a judgment of acquittal for the defendant.

Husband and Wife . . . New York separate maintenance judgment awarding wife alimony did not survive subsequent Nevada divorce obtained by her . . . provision of New York judgment giving wife partial custody of children and support for them unaffected by Nevada court's decree which was obtained without personal jurisdiction of husband and children.

■ *MacKay* v. *MacKay,* N.Y. Appellate Div., First Dept., January 29, 1952, Cohn, J.

In 1947, a judgment of separation was entered in New York, in favor of a wife, granting her custody of the parties' children, subject to defendant's partial custody during stated periods, and an annual allowance for the support of herself and the children. In 1951, the wife sued for and was granted a divorce in Nevada. The Nevada court awarded her sole custody of the children and also made provision for the support of herself and children along the lines set forth in the New York separation judgment. The husband was not personally served and did not appear in the Nevada action. Upon her return from Nevada the wife found that the children were being kept by their father beyond the period he was permitted to have them and when she demanded their return the husband refused to comply. On her motion, the New York Supreme Court at Special Term adjudged defendant husband in contempt of the custodial provisions of the judgment of separation and also, denied his cross motion to modify the judgment by striking therefrom the provision for the wife's support and the custodial and support provisions for the children. He contended that the separation judgment was nullified by the Nevada decree and he appealed from the lower court's two orders.

Cohn, J., writing for the majority of the Appellate Division, first held that defendant was not in contempt because he could not return custody of the children to plaintiff wife while she was in Nevada. The Justice then proceeded to consider what effect should be given the Nevada divorce. Stating that the Nevada decree, which the husband did not choose to challenge, validly severed the marital relationship, the Court held that since the wife had procured the divorce, she was bound by the decree and estopped from claiming the benefit of the alimony provisions entered under the New York separation judgment. She could not insist that she was still entitled to the New York support provision which, when made, was based upon the continuance of the marital relationship. Justice Cohn summarized as follows: "A claim by her for a

continuance of support under the New York decree would tend to destroy the effect of the Nevada decree which she herself procured by an election to terminate the marriage. Plaintiff having chosen to obtain a complete severance of the marriage, could not insist that she still had the right to enjoy the benefits flowing from that relationship under the New York State decree".

However, the Court said that the provisions of the New York separation judgment regarding the custody and support of the children survive since the children and husband were absent from Nevada during the wife's domicile there and, in awarding the custody of the children to the wife, the Nevada court had attempted to exercise an *in personam* jurisdiction over persons not before it.

Glennon, P. J., concurred with Justice Cohn.

Dore, J., concurred in part, stating that he would merely hold that the wife is estopped by her own action from claiming under the alimony provisions of the New York judgment. He thought it "unnecessary at this time" to hold that the Nevada decree validly severed the marital relationship.

Callahan, J., dissented in part in an opinion in which Shientag, J., concurred. They believed that the present case was governed by *Estin* v. *Estin*, 296 N.Y. 308, affd. 334 U.S. 541, where it was held that a wife was still entitled to enforce the support provisions of a New York separation judgment when her husband had, subsequent to the judgment, obtained a divorce in Nevada. Under the doctrine of "divisible divorce" which that case established, a separation decree could survive after the dissolution of the marital status, and the dissenting Justices believed that the present case is like the *Estin* one in that the divorcing court had no jurisdiction except to dissolve status.

The President . . . Bureau of Internal Revenue reorganized . . . existing offices abolished . . . new officers to be appointed by Secretary of Treasury under classified civil service.

■ *Reorganization Plan No. 1 of 1952* (17 Fed. Reg. 2243).

Pursuant to the provisions of the Reorganization Act of 1949, the President submitted to Congress Reorganization Plan No. 1 of 1952, providing for the abolition of existing offices in the Bureau of Internal Revenue and the establishment of new ones. The offices of Assistant Commissioner, Special Deputy Commissioner, Deputy Commissioner, Assistant General Counsel, Collector and Deputy Collector were abolished and their affairs must be wound up by December 1, 1952. The new offices established are as follows: "(1) three offices each of which shall have the title of 'Assistant Commissioner of Internal Revenue,' (2) so many offices, not in excess of 25 existing at any one time, as the Secretary of the Treasury shall from time to time determine, each of which shall have the title of 'District Commissioner of Internal Revenue', and (3) so many other offices, not in excess of 70 existing at any one time, and with such title or titles, as the Secretary of the Treasury shall from time to time determine" and the additional office of "Assistant General Counsel". Each new officer shall be appointed by the Secretary of the Treasury under the classified civil service.

The Plan became effective March 15, 1952, and was published in the *Federal Register* the same day.

Trade-Marks, Trade Names and Unfair Competition . . . Federal District Court has jurisdiction to enjoin American citizen, who has obtained Mexican registration of same trade-mark name, "Bulova", which American company owns, from selling watches to tourists who bring them back to the United States.

■ *Bulova Watch Co., Inc.* v. *Steele et al.*, C.A. 5th, February 21, 1952, Rives, C.J.

In a federal District Court, the Bulova Watch Company sued defendant, a United States citizen, seeking to enjoin him from using the name "Bulova" on watches which he was producing in Mexico and selling to tourists who brought them back to the United States. Since 1927, plaintiff had registered the name "Bulova", as applied to watches, in the United States. However, defendant had registered the same name in Mexico in 1933 after a search of the records disclosed that it had not been registered there. Defendant was personally served in Texas, but the District Court dismissed the suit on the ground that it was without jurisdiction because the alleged acts of unfair competition occurred solely in Mexico.

On appeal, the Court of Appeals reversed. Judge Rives, writing the majority opinion, said that the issue in the case was whether defendant's acts, although lawful where done, could be considered as in violation of the United States' trade-mark laws or laws relating to unfair competition. He observed that in the Lanham Trade-Mark Act of 1946, 15 USC §§1051-1127, Congress intended to regulate interstate and foreign commerce to the fullest extent of its constitutional powers, thus authorizing action against United States citizens whose conduct in other countries substantially affected such commerce. Furthermore, the United States' exercise of jurisdiction over one of its own nationals, Judge Rives explained, would not, in this case, conflict with Mexico's sovereignty since, although defendant owned a legal Mexican trade-mark, he was under no duty to use the "Bulova" name and Mexico was not interested in his exercise of the privilege which it purportedly granted.

Dissenting, Judge Russell argued that the majority's decision gives the Lanham Act extraterritorial effect. In addition, this error was "compounded and increased", he said, by the holding that a federal court has authority to adjudicate

the propriety and legal effect of the determinations of a sister republic so as to declare illegal, and subject to injunction, conduct wholly within the jurisdiction and territorial confines of that republic. Even under the broadest interpretation of the Lanham Act, he declared, it does not attempt to prescribe a standard of fair competition for the entire world.

Further Proceedings in Cases Reported in This Division.

■ The following action has been taken in the United States Supreme Court:

AFFIRMED, March 3, 1952: *Adler et al.* v. *Board of Education of the City of New York* — Constitutional Law (36 A.B.A.J. 136, 407, February, May, 1950; 37 A.B.A.J. 68, 467, 536, January, June, July, 1951).

AFFIRMED, March 10, 1952: *Sacher et al.* v. *U. S.* — Contempt (36 A.B.A.J. 491, June, 1950, 37 A.B.A.J. 536, 928, July, December, 1951); *Carlson* v. *Landon* — Aliens (37 A.B.A.J. 62, January, 1951).

REVERSED, March 10, 1952: *Frisbie* v. *Collins* — Constitutional Law (37 A.B.A.J. 608, August, 1951; 38 A.B.A.J. 69, January, 1952).

MOTION TO DISMISS APPEAL GRANTED, March 3, 1952: *Doremus and Klein* v. *Board of Education of Borough of Hawthorne et al.*—Constitutional Law (36 A.B.A.J. 1028; December, 1950).

CERTIORARI DENIED, March 3, 1952: *United States Trust Co.* v. *Zelle* — Bankruptcy (38 A.B.A.J. 65; January, 1952).

■ On March 17, 1952, in the United States District Court for the Northern District of California, Southern Division, District Judge Goodman ruled in the case of *Bank of China* v. *Wells Fargo Bank & Union Trust Co.* — Banks and Banking (36 A.B.A.J. 855, October, 1950; 37 A.B.A.J. 788, October, 1951) that the Nationalist Government of China, rather than the Peoples Government, is legally entitled to money which was deposited in defendant bank before the Communists occupied the Chinese mainland. Although the Nationalist Government now controls only an extremely small section and population of the country, Judge Goodman said that since the war in Korea our national policy has been adverse to that of the Peoples Government and, further, we recognize only the Nationalist Government as the representative of the State of China.

Additional Recent Decisions of Interest

■ *Ringstad* v. *I. Magnin & Co.*, Wash., January 17, 1952, 239 P. 2d 848.

Liability of retailer for injuries to purchaser due to inflammable character of cocktail robe.

■ *Morgan* v. *State*, Neb., February 1, 1952, 51 N.W. 2d 382.

Reasonableness of state board regulations relative to practice of osteopathy.

■ *Jawish* v. *Morlet*, Mun. Ct. of App., Dist. of Columbia, January 11, 1952, 86 A. 2d 96.

Validity of District Minimum Wage Law in light of conflicting Supreme Court decisions.

■ *Gonzales* v. *United Fruit Co.*, C.A. 2d, 193 F. 2d 479.

Shipowner's responsibility for failure to X-ray seamen before hiring.

■ *United States* v. *Construction & General Laborers Local Union*, U.S. D.C. Mo., 101 F. Supp. 869.

Political "expenditures" or "contributions" by union members.

■ *Bristow* v. *Cheatham*, Ariz. Sup. Ct., January 12, 1952, 240 P. 2d 185.

Appropriating underground waters.

■ *McWhorter* v. *U.S.*, C.A. 5th, January 31, 1952, 193 F. 2d 982.

Corroboration in perjury prosecution.

Review of Supreme Court Decisions

■ Our department, "Review of Recent Supreme Court Decisions", which usually appears on these pages, has been omitted this month because of the length of the summary of the proceedings of the House of Delegates. The Supreme Court reviews will be resumed in the June issue of the JOURNAL.

Department of Legislation

Charles B. Nutting, Editor-in-Charge

■ As the second article in the projected series on comparative legislative procedure, we are happy to present the following statement by Professor Sawer. As Professor of Law in the Australian National University, the author is well qualified to deal with the subject he has chosen.

Australian Legislative Procedure

by Geoffrey Sawer, Professor of Law, Australian National University

■ The Commonwealth of Australia is a federation whose founders adopted the general pattern of distribution of powers in the Constitution of the United States. However, they combined with these American ideas most of the characteristic features of British political institutions. The six Australian states which federated in 1900 had each by then acquired complete local self-government based upon the English principle of parliamentary supremacy, with executives *(i.e.,* Ministers of the Crown) consisting of members of the parliament chosen from the party of coalition having a parliamentary majority, and with lower houses having maximum terms but capable of dissolution. The application of British principles of responsible government was complicated by two factors. Firstly, there existed upper houses in each state which were either elected on a restricted property franchise or nominated by the executive government, and in either case could claim greater powers than by custom the English House of Lords had come to possess. Secondly, the Queen was represented in each state by a governor; these governors had within the previous fifty years possessed and exercised very considerable discretionary powers, and the development of popular sovereignty had not yet by convention restricted the discretion of governors to quite the same extent as the royal prerogative in England had been restrained by the constitutional history of that country.

It was natural enough that the Australian federation fathers, all of whom had played prominent parts in the politics of their respective states, should prefer the "responsible government" relationship between legislature and executive and seek to apply it in the federal sphere, though some of them predicted that either responsible government would destroy federalism or federalism would destroy responsible government. They followed American practice so far as to erect a Senate consisting of equal numbers of representatives from each state, elected on a staggered system and incapable of dissolution except to resolve a deadlock; but they followed British practice in assigning to this Senate, as an upper house, more restricted powers than those possessed by the House of Representatives based on population. In particular, the Senate may not initiate any money bills, may not amend any taxation or appropriation bills and may not amend any bill so as to increase any charge or burden on the people; it may, however, request the House of Representatives to make such amendments (Cons., § 53). The Senate is protected against "tacking" by requirements that appropriation and taxing acts shall deal only with appropriation and taxing respectively, and that customs and excise taxation shall deal only with customs and excise respectively. (Cons., §§ 54-55) This restriction of the financial authority of the federal upper house follows the trend of custom and legislation in the British Parliament and in the parliaments of the states. Because of the dominant importance of finance and the absence of any other important power peculiar to the Senate (such as concurrence in executive appointments or treaty-making) the Senate has in fact become a party house of secondary importance. The government is "responsible" to the lower house. If difference of party make-up causes a deadlock, both houses may be dissolved and the deadlock resolved by a simultaneous election for all seats in both houses (Cons., § 57); this machinery has been used twice only in the last fifty years. On the whole, responsible government rather than federalism has been the dominant feature of legislative procedure in the federal sphere. There is a federal governor-general who in theory might be expected to exercise something like the discretions of state governors, but in practice he has tended even more than they have to follow the royal precedent of accepting the advice of his Ministers on all critical occasions, such as requests for a dissolution of the lower house, or a "deadlock" double dissolution.

The six states have continued to develop the institutions which they possessed in 1900 along the lines of restricting the importance of the upper houses and reducing by convention the discretion of governors. Queensland has abolished its upper house. New South Wales has adopted an upper house elected by the members of the lower house, and having restricted authority on money bills, along the lines of the English Parliament Act of 1911. Victoria has adopted universal franchise for its upper house. However, South Australia, Western Australia and Tasmania still possess upper houses elected by about one-third of the adult population and inclined to veto legislation passed up by the

lower houses in a pretty active and independent way. Within the last year, each of them has obstructed the legislative policy of the government and the lower house. South Australia has a double-dissolution system for overcoming deadlocks; Western Australia and Tasmania have no formal machinery for such purposes.

Since the political structure of these parliaments has followed so closely British traditions, it is understandable that their detailed legislative procedure should be based in large part on the Standing Orders of the House of Commons, with such modification as their individual Constitutions may require. Hence the normal bill procedure is First Reading (purely formal), Second Reading (active debate on general principles) Committee of the Whole House[1] (consideration clause by clause), Third Reading (tending to become formal); in the particular case of money bills, the measure must be proposed by message from the Governor-General or Governor (which means in substance that only the government can initiate such measures) and the measure has to be considered in Committee of the Whole House before going through other stages. The Standing Orders of the Federal House of Representatives adopted on March 21, 1950, are the most recently consolidated set of rules, and reflect the history of a legislature with a crowded program almost monopolized by government business. Notice particularly the strict time limit for debates (Or. 92), the provision for fixing of even more stringent time limits by the government (Or. 93) and the provision for "gagging" (Ors. 94, 95). The predominant position of the government in the conduct of legislative procedure is indicated by the priority given government business (Or. 105), and the control of Ministers over the legislative program (Ors. 106, 107). The dependence of the government on the confidence of the houses is shown by the priority given motions of want of confidence (Or. 109). The relations between the two houses are reflected in the special provision made for the consideration of Senate amendments (Ors. 242*ff*.). The procedure of the state parliaments presents some minor variations from this pattern. Some of them have no regular time limit on debates and no provision for closure. Some of them introduce all bills in the first place in Committee of the Whole House, in which leave to introduce the bill is debated.

"Private bill" procedure, as understood in England, is unknown. For purposes of publication, a distinction is drawn between "local and personal" acts and public acts, but the former usually go through the same procedure as the latter. But probably the feature of Australian legislative procedure which would seem most strange to American observers is the almost complete absence of committee procedure, in the sense of examination of bills, and of parties supporting or opposing bills, by subcommittees of the houses. We make even less use of committees than does the British House of Commons. The houses have subcommittees of a business or executive character (Library, Privileges, Standing Orders, etc.); there have been experiments with committees to scrutinize delegated legislation (a very necessary activity, since as in Britain the delegating act does not even have to lay down general standards); the Commonwealth Parliament has recently re-established a Committee on Public Accounts and set up a Committee on External Affairs (but neither will be much concerned with legislation); in the first ten years of the Commonwealth, select committees were employed in the preparation of a few of the great machinery acts of the new federation, such as the Navigation and Tariff Acts; we occasionally meet with select committees set up in the course of political maneuvering—usually for delaying purposes (such as a Federal Senate Committee on Deadlocks between the Houses set up in 1950, which consisted wholly of members of the Labour Party, at a time when that Party had a Senate majority).

But for some reason, probably connected with the working of responsible cabinet government in a country with strongly disciplined political parties, committee systems have not taken on. Even the select committees of the formative federation years were for the most part replaced early in their activities by Royal Commissions, and the latter form of enquiry has been used much more frequently; judges are usually appointed as commissioners and the subject of enquiry is very rarely a bill as such, although the investigation may lead to legislation. Even the Tariff Commission, a permanent body designed to remove the detail of tariffs from active politics, has become in practice an advisory authority whose recommendations are apt to be debated in full in Committee of the Whole House. Hence the process of investigation, weighing of evidence, drafting and amendment is in reality carried out in three stages; firstly by the permanent civil service—(Australia has exclusively career services with great security of tenure, pensions, competitive appointment and promotion, etc.); secondly by the Cabinets of Ministers of the Crown—(there are no inner cabinets as in Britain); thirdly by debate in the houses—(apt to be cut short by closure devices, especially towards the end of a session when "innocents" instead of being slaughtered as in the United States are "bullocked through"). Private members' Bills are very rare. Occasionally party committees are appointed to prepare bills of a very unusual character, especially if they do not arise out of the regular operation of existing departments, but this is uncommon. Hence the opportunities for direct public participation in bill-making are almost negligible. Curiously enough, organized lobbying, which one would expect under such conditions, is also rare; sporadic

1. This consists simply of the House sitting under rules which give it greater flexibility of procedure. It is not a committee in the modern sense of the word.

lobbying, pressure through party organizations, the press and the civil service, influence the content of legislation in ways which differ from case to case. Perhaps we rely excessively on the old British principle that members of Parliament are presumed to represent everyone and know everything.

The Commonwealth and each state have parliamentary draftsmen attached to their respective law departments who are responsible for the form of all bills; following the precedents of Lord Thring and other famous British parliamentary draftsmen, they have established a high degree of uniformity of usage in the minutiae of their craft. They are career civil servants of great seniority, and their labors in the field of indexing, consolidation and republication of statutes have made Australian statutory law for the most part readily accessible. In principle, the services of the Parliamentary draftsmen are available only to the government of the day, through the direction of the Attorney General (who is a politically appointed cabinet minister); in practice, they are encouraged to assist private members in the preparation of bills (a rare event) and of amendments to government bills during their passage through the houses (a frequent event). Most of the standing orders permit amendments of a verbal or formal nature to be made, and clerical or typographical errors to be corrected, by the chairman of committees of the respective houses, without recommitting the bill. This power is extensively used, in consultation with the parliamentary draftsman, to trim up a bill after it has been mauled in Committee of the Whole. Very occasionally, counsel are briefed to draft bills, or to assist the parliamentary draftsman in such work. There are no law school institutions engaged in drafting, as in the United States. The job of the Australian drafstman is particularly difficult and important because the courts have followed the British precedent of refusing to consider the parliamentary history of a measure as an aid to interpretation; doubtless this attitude has been supported by the virtual absence of systems of legislative subcommittee enquiry.

In conclusion, I shall mention the type of drafting device which has been of particular importance in Australia, as a federation with a rigid constitution, namely the "severability" clause; it is of course well known in the United States. A typical example is Commonwealth Acts Interpretation Act, §15A:

> Every Act, whether passed before or after the commencement of this section, shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Such provisions have been held to authorize two types of operation on a statute found to be partially invalid. Firstly, distinct provisions may be "blue-pencilled" out, if the remainder is a grammatical and logical provision not representing a gross departure from the policy or purpose of the statute as enacted, see especially *A.R.U.* v. *Vic Railways Commrs.* [1930] 44 C.L.R. 319. It is competent to the legislature to require severance even if the result is a substantially different policy, etc.; see especially the *Bank Nationalization* case, [1949] 76 C.L.R. 1, [1950] A.C. 227; but such intention is not readily inferred. Secondly, distributive class expressions including objects or activities beyond the competence of the relevant legislature may be "read down" so as to extend only to a narrower class within power, if the statute indicates with sufficient clearness the restricted class to be substituted; see especially *Ex parte Henry*, [1939] 61 C.L.R. 634. The above type of clause is treated as requiring once-for-all interpretation of the statute so as to produce validity; it does not authorize the court to inquire as each case arises whether that case might have been validly dealt with by the legislature in the way indicated, without reaching any general definition of the class of cases covered, and it is doubtful whether a severability clause expressed to require such "wait-and-see" severability would be constitutionally valid, since it might be considered as putting the courts in the position of subordinate legislatures; see especially, per Latham, C.J., in *Pidoto's* case, [1943] 68 C.L.R. 87. These and other Australian judicial discussions of severability exhibit a more subtle analysis than is usual in American opinions in the field, partly because of the more rigid interpretative methods of the Australian courts, their unwillingness to consider parliamentary history and *travaux préparatoires* and their consequent inhibitions against evaluation of legislative policy.[2]

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2. The author acknowledges the kindly assistance of Commonwealth and State Parliamentary Draftsmen in collecting material for this summary.

Tax Notes

■ Prepared by Committee on Publications, Section of Taxation, Harry K. Mansfield, Chairman.

Bad Debts—Time and Manner of Deductions

■ Among the many innocent-looking but litigation-provoking provisions of the Internal Revenue Code is the allowance of a deduction for debts that become worthless within the taxable year. Both because of the generality of the term "worthless" and because of the availability of this deduction to all taxpayers, there has been much controversy over the applicability of this section. In addition, Congress has provided special rules as to partial worthlessness of business debts and also as to the deduction by individuals of nonbusiness debts, with consequent enlargement of the area of controversy.

Section 23 (k), which allows a deduction for bad debts, may be summarized as follows:

(1) As to business debts of all taxpayers:

(a) The taxpayer may deduct the full amount of specific debts which become worthless during the year;

(b) If a specific debt has become only *partially* worthless, the taxpayer may deduct the worthless portion to the extent that such part has been charged off during the year;

(c) In lieu of taking deductions with respect to specific debts, as above, the taxpayer may, in the discretion of the Commissioner, deduct a reasonable addition to a reserve for bad debts.

(2) As to nonbusiness debts (not applicable to corporations):

(a) If the debt becomes worthless during the year, the loss is considered as a loss from the sale or exchange of a short-term capital asset;

(b) No deduction may be taken on account of partial worthlessness;

(c) The reserve method cannot be used.

(3) As to debts evidenced by "securities" (and which are capital assets):

(a) If such a security has become worthless, the loss is considered a loss from the sale or exchange, on the last day of the year, of a capital asset;

(b) Provisions as to worthless or partially worthless bad debts are not applicable.

These provisions raise a number of questions. What is the distinction between business and nonbusiness debts? When does a debt become wholly or partially worthless? What if the taxpayer picks the wrong year? When may the taxpayer "charge off" the "partially worthless" portion of the debt? Suppose the taxpayer collects a debt which he has previously deducted as worthless? How does the reserve method work?

Business and nonbusiness debts. A nonbusiness debt is defined in Section 23 (k) as one in which the loss resulting from worthlessness is not incurred in the taxpayer's trade or business. The test is applied as of the time of the loss, not as of the time the debt was incurred. Suppose that *A*, a merchant, loans money to *B* in connection with and in furtherance of *A*'s business. Thereafter *A* sells the business and retires, but he retains as his own property the debt owed by *B*. Subsequently, *B* becomes insolvent, and the debt becomes worthless. This is a nonbusiness bad debt and the deduction may be taken only as a short-term capital loss. That means that it will be lumped with other capital gains and losses, which are subject to the limitation (in Section 117) that capital losses may be deducted only to the extent of capital gains (plus, in the case of an individual, either $1,000 or the taxpayer's ordinary net income, whichever is lower). The nondeductible portion may, of course, be carried over to the next year.

Time of worthlessness. Perhaps the most troublesome question relating to the deduction for bad debts is the selection of the year in which the debt became worthless. Take the case of *Boehm* v. *Commissioner*, 326 U.S. 287 (1945), which involved the comparable question of when certain corporate stock became worthless. The taxpayer first took the deduction in 1934, but the Commissioner disallowed the deduction on the ground that the stock had not become worthless during that year. The taxpayer then claimed the deduction for 1937, but again there was a disallowance on the ground that the stock had not become worthless during that year. The Tax Court, in sustaining the Commissioner, held that the stock had become worthless prior to 1937. The Second Circuit Court of Appeals affirmed the decision in an opinion in which there is some implication that the deduction should have been taken in 1934! (See 146 F. 2d 553.) The Supreme Court affirmed the lower courts.

The facts of the *Boehm* case show some reasonable basis for arguing that the "identifiable event" marking the worthlessness of the stock could have occurred in any one of four years: 1932, 1933, 1934 or 1937. Thus, the taxpayer, confronted with multiple uncertainty, did not choose often enough or well enough and consequently lost out completely on a deduction of approximately $20,000.

Since many insolvent debtors die a slow financial death, it is often difficult for the creditor to sustain the burden of proving that the debt became worthless in one particular year rather than another. This is particularly true if information as to the debtor's resources is not readily available. While the Treas-

ury Regulations specifically provide that legal action against the debtor is not essential where the circumstances show that a judgment would probably be uncollectible, it may be wise in some cases, if the debt is large, to go through a lawsuit to establish the fact of uncollectibility. Even then, there is the risk of not having taken the deduction soon enough.

Statute of limitations on refunds based on bad debt deductions. Assume that *T* took a bad debt deduction in his 1945 return. That return is audited by the Bureau in 1949, at which time the deduction is disallowed on the theory that the debt actually became worthless in 1944. The usual three-year limitation period on refund claims would bar *T* from now claiming this bad debt as a 1944 deduction—an obvious inequity, since a lapse of three years or more in the auditing of a return is not unusual. Recognizing this, Congress provided, in 1942, for a seven-year limitations period on refund claims based on bad debt deductions. (See Section 322 (b) (5) of the Internal Revenue Code.)

Charge-off of partially worthless debts. Business debts which have become partially worthless may be "charged off" by the creditor and deducted, to the extent they have become worthless. The debt must have become partially worthless either in the year of charge-off *or in some prior year.* Thus, if a debt gradually declines in value, it is not essential to charge off and deduct the partial worthlessness each year. The taxpayer may wait until it becomes wholly worthless and deduct the full amount then; or he may charge off and deduct in one year the total decline in value in that and prior years (except, of course, to the extent that such partial worthlessness has already been deducted in an earlier year).

The "charge-off" must actually be made and is usually evidenced by entries in the creditor's books showing that the amount charged off is no longer considered an asset.

Subsequent collection of a bad debt. The taking of a bad debt deduction does not mean abandonment of the claim. On occasion, an insolvent debtor regains sufficient economic vitality to repay his obligations, even after the statute of limitations bars a recovery. Such payment does not mean that the prior bad debt deduction was improper, although it may have some significance in weighing the evidence offered in support of the claim of prior worthlessness. The latter question must be determined on the basis of the facts at the time the deduction was taken. But upon subsequent collection of such a debt, the fortunate creditor must include the amount collected in his income for that year, except to the extent that no tax benefit was derived from the prior deduction (Section 22(b) (12)).

Reserve method. As an alternative to deducting specific bad debts, many businessmen choose to deduct an amount representing a reasonable annual addition to a bad debt reserve. A change from one method to the other can be made only with the consent of the Commissioner.

The reserve method avoids the troublesome question of when a particular debt became worthless. It does, however, introduce the element of reasonableness of the annual additions to the reserve. That element is based upon an estimate of future losses and is answered in the context of each year's circumstances —the volume of credit sales, current experience in collecting accounts, and any other factors pertinent to the extension of credit in that particular business. If subsequent collections prove to be more or less than estimated when the reserve was created, the amount of excess or inadequacy in the existing reserve will also be considered in determining what is a reasonable addition for the taxable year.

For a merchant with a substantial volume of credit sales, the reserve method is frequently the better method to use, because it is more difficult and expensive to determine the year in which each of many debts became worthless than it is to determine how much should reasonably be set aside each year as a reserve.

Contributed by Committee Member
Spurgeon Avakian

The President's Page

(Continued from page 402)

an outstanding address by Justice Jackson. There were three important days at New York University. The first was characterized by the excellent address of Sir Arthur Goodhart. On the second day I had the privilege of talking to the law students and answering their questions. The concluding day featured a Conference on Prelegal Education, the morning program being shared by Chief Justice Arthur T. Vanderbilt and me, followed by panel discussions and the determination of conclusions. The Conference was attended by representatives of a large number of colleges, many accompanied by outstanding students. The occasion was unique in character and arranged with great skill by Dean Russell D. Niles.

BAR ACTIVITIES

Paul B. DeWitt • Editor-in-Charge

■ Nicholas Kelley, vice president and a director of the Chrysler Corporation, was elected president of the Practising Law Institute at a recent meeting of the Board of Trustees. He succeeds former Secretary of War Robert P. Patterson who died in the Elizabeth air crash on January 22. The Institute is a nonprofit educational organization which provides postadmission training for lawyers.

Judge Stanley H. Fuld of the New York Court of Appeals was elected to fill the Board vacancy created by the death of Mr. Patterson.

A permanent fund in memory of Mr. Patterson was authorized by the Board to provide scholarships in the Institute's courses. These will be awarded on the basis of individual need and merit.

A trustee since 1938, Mr. Kelley becomes the Institute's third president. Arthur A. Ballantine, who remains a member of the Board, preceded Mr. Patterson. Mr. Kelley is president of the National Civil Service League and a trustee of the Carnegie Corporation of New York. During World War II he was chairman of an alien enemy hearing board.

■ The Florida Bar will sponsor this summer a state-wide program for the practical training of law students. Each student is required to have completed at the date of his participation in the program at least two semesters of work in a Florida law school. Law firms throughout the state will be asked by their local associations to participate in the program by taking one or more students selected by the firm. It is contemplated that the students will perform such elementary work as making drafts of simple instruments, organizing case files, preparing memoranda of law, gathering evidence and acting as messengers.

■ The second annual Lawyers' Week, sponsored by the Southwestern Legal Foundation, brought to the campus of Southern Methodist University Sir Gladwyn Jebb, Dr. S. S. Nehru and Senator Estes Kefauver. Two institutes were conducted, one on the trial of land suits and one on the traffic court. A conference on the general theme of the campaign against organized crime and immorality in government was jointly sponsored by the Southwestern Legal Foundation and the Texas Attorney General's Conference on Organized Crime. Other activities during the week were a full membership meeting of the Foundation, the annual Case Club arguments of seniors in the Law School, and the annual meeting of the Southern Methodist University law alumni.

■ A family law institute sponsored by District One of the Ohio State Bar Association and the Ohio Practicing Law Institute Committee was held in Cincinnati in March. The institute dealt with adoption procedure, infants' contracts and liabilities for torts.

■ The Philadelphia Bar Association celebrated its 150th anniversary in March. The celebration started with a dinner at which Mr. Justice Owen J. Roberts acted as toastmaster and Senator George Wharton Pepper as the featured speaker. Leonard W. Brockington also delivered an address. The following morning official commemorative exercises were held at the Academy of Music. Speakers were President Howard L. Barkdull of the American Bar Association, Edward J. Fox, Jr., President of the Pennsylvania Bar Association, Arthur Littleton, former Chancellor of the Philadelphia Bar Association, and Mr. Justice Robert H. Jackson, whose subject was "The Genesis of an American Legal Profession". In connection with the celebration, a collection of materials portraying the history of the law was organized by the Association. William Clarke Mason was Chairman of the General Committee in charge of the celebration and Bernard G. Segal is the present Chancellor of the Association.

Lawyer Referral Service

(Continued from page 384)

MINNESOTA	Lew C. Church, Minneapolis
MISSISSIPPI	Bernard W. Chill, Jackson
MISSOURI	Irene L. Dulin, St. Louis
NEBRASKA	Clarence Davis, Lincoln Alfred G. Ellick, Omaha
NEW JERSEY	Nicholas Conover English, Newark
NEW YORK	*Orison S. Marden, New York Vilas M. Swan, Rochester George S. Van Schaick, New York *William M. Wherry, New York
NORTH CAROLINA	Louis J. Poisson, Wilmington
NORTH DAKOTA	Ronald N. Davies, Grand Forks Wm. H. Hutchinson, Wahpeton
OHIO	*Andrew Pangrace, Cleveland Chester R. Shook, Cincinnati
OREGON	C. O. Porter, Eugene
PENNSYLVANIA	Joseph S. Henderson, Philadelphia *Theodore Voorhees, Philadelphia
RHODE ISLAND	C. MacR. Makepeace, Providence
TENNESSEE	Clarence Kolwyck, Chattanooga
TEXAS	Curtiss Brown, Houston Cecil Burney, Corpus Christi *Wm. H. Jack, Dallas
UTAH	A. S. Christenson, Provo
VERMONT	Osmer C. Fitts, Brattleboro
VIRGINIA	Oren R. Lewis, Arlington
WEST VIRGINIA	Charles McCamick, Wheeling
WISCONSIN	Cecilia Doyle, Fond du Lac

*Member of the Standing Committee on Lawyer Referral Service.

Activities of Sections and Committees

SECTION OF CRIMINAL LAW

■ The Section of Criminal Law has a number of projects under way, only a few of which can be mentioned here due to the limitation of space. The Committee on Sentencing, Probation and Parole is presently interested in a project to determine the values of parole and to obtain authentic data on how our parole systems have benefited the administration of criminal justice. Most of us assume that parole has definite values, but the Committee seeks to determine scientific information on that subject.

Our Committee on Military and Naval Justice and the officers of the Section are co-operating with the Human Resources Research Institute of the United States Air Force on a project directed toward the study of the use of convicted persons by the Armed Forces.

Members of our profession continue to have great concern with the torrent of crime portrayals on television, radio, in the motion pictures, the comics and comic strips. The portrayal of crime is the most profitable commodity the mass media have to sell the public, and the effects are a subject of continuing concern to this Section. We suggest that when members of the Association are shocked at any crime portrayal they express their opinions to the sponsors or producers. The effects of this constant bombardment of crime portrayals upon the minds of impressionable persons is a serious subject of national concern.

SECTION OF CORPORATION, BANKING AND BUSINESS LAW

■ The Corporation, Banking and Business Law Section of the Association has the following ten Divisions:

Corporations; Noncorporate Business Organizations; Co-operative Corporations; Banking; Finance and Securities; Reorganizations and Bankruptcy; Antitrust Law; Trade; Mercantile Law; and Food, Drug and Cosmetic Law.

The work of each Division is carried on by Committees, to which are assigned specific fields. Committee members number more than 500. While the work of some Committees, such as those which report periodically on important decisions, is fairly constant, that of others naturally varies from year to year as problems arise, legislation is proposed or other developments occur in their respective fields. Last year, for example, was a particularly active one for the Committee on the Proposed Uniform Commercial Code.

Through its publication *The Business Lawyer*, the Section endeavors to keep its membership of several thousand informed of Section activities.

COMMITTEE ON LEGAL AID

■ The American Bar Association has repeatedly advocated the establishment of adequate legal aid facilities throughout the United States. This program proceeds from the conviction of Bar leaders that under modern conditions organized legal aid has become both the shield and the sword of our profession. It protects the integrity and independence of the Bar and enhances the lawyer's prestige with the public. At the same time a sound legal aid program enables us to discharge our duty to all who require our services, rich and poor alike.

According to the 1950 census, there are still more than seventy-five major communities which obviously require full-fledged legal aid offices. In hundreds of smaller places volunteer committees should be organized promptly. Carefully planned leadership by state and local associations has been effective in getting the job done in many cities and counties, both large and small, during the past few years.

Both the Standing Committee on Legal Aid Work and the National Legal Aid Association are most anxious to be of help, and informative literature is available, without charge, on request. Three booklets, particularly, will be found to be helpful to bar association committees. These are "Why Legal Aid in Your City?", "The Legal Aid Handbook—How To Organize and Operate a Legal Aid Office" and "The Cost of Legal Aid in a Metropolitan Area". Copies may be obtained by writing the Committee chairman, Orison S. Marden, 14 Wall Street, New York 5, New York, or the National Legal Aid Association, 328 Main Street East, Rochester 4, New York. In addition, the Committee or the National Legal Aid Association will gladly answer specific questions and frequently can arrange to supply speakers for bar association meetings.

COMMITTEE ON PUBLIC RELATIONS

■ The Committee has been busier than the well-known paper-hanger since the Annual Meeting in New York last September, and expects to continue to be in the future, despite limited funds and facilities.

Perhaps its major accomplishment has been the issuance of a manual on *Public Relations for Bar Associations*, a pioneering effort in the American Bar Association. The

editor of this book is Richard P. Tinkham, of Hammond, Indiana, who has had as collaborators Albert P. Blaustein, of New York; Charles O. Porter, of Eugene, Oregon; Edward B. Love, of Chicago, Illinois; and Thomas L. Sidlo, of Cleveland, Ohio, the Committee chairman. The manual was distributed among the House of Delegates and the Board of Governors at the Mid-Year Meeting in Chicago, February 25-26, 1952. It is necessarily a preliminary draft, and is "not to be quoted or republished in any form". The reason for this prohibition is that before undertaking a general distribution of the book, the Committee felt that it should be put in its best possible form, from the standpoint of accuracy, coverage and usefulness. We therefore hope that those who have received copies will respond to the invitation of the editor to send comments, criticisms and suggestions to him at their earliest convenience.

Along with the manual, the Committee, under the editorship of Messrs. Blaustein and Porter, has turned out a specimen *Public Relations Bulletin,* for similar distribution and to serve as a running supplement to the manual. It is hoped that the first of these *Bulletins* may be issued in the near future.

Progress, we believe, has been made in the fields of radio and television, motion pictures, comic strips and comic books, (a) to dissuade producers from programs or publications that are not accurate or fair portrayals of lawyers and courts, and (b) to encourage the making of those that do have the stamp of reality. This is necessarily a slow, plodding task, with little in the way of dramatic or spectacular results to show for the labor put into the effort. The Committee, however, is hopeful that in time the legal profession will occupy the same fortunate position which the medical profession now does in this regard.

Progress also is being made with the Press. Fairness is important, of course, but fairness is not being stressed so much as accuracy, because if there is accuracy, fairness we believe will necessarily follow. As our Committee conceives it, all that the organized Bar, as represented in our case by the American Bar Association, wishes from those who report its doings and the day-to-day work of the judiciary, is fidelity to fact. If we can have that, we can and should expect no more.

We are hopeful in the not-far-distant future to put out a series of newspaper articles based on the Canons of Ethics and the manifold aspects or manifestations of the law, its daily practice and the work of the judiciary. We have had promises of co-operation from more than one agency in getting such a series published and syndicated.

The magazines, notably *The Reader's Digest,* have been performing a fine public service in telling the same story. We are devoting ourselves to encouraging more articles such as that which appeared in the February 1952, issue of the *Digest,* entitled "Your Day in Court", by James Finan.

Your Committee has been co-operating with Lawyer Referral Service and Legal Aid in publicizing the function of each, and in encouraging the use of each service.

The Committee is handicapped by limited funds. The revenues of the American Bar Association are slender, we realize, and it is no easy matter for the Board of Governors to find more funds for our purposes. We are trying, therefore, to discover outside sources of income which ultimately would enable our Committee to become self-sustaining. These sources must of course be irreproachable, a condition precedent that will be observed, no matter how inviting the possibilities may be.

One of the pressing needs of the Association is the establishment of a reference library, which will collect, organize and make available all kinds of material pertaining to public relations. Edward B. Love, the Director of Activities, has already taken the first step in this direction, and results should soon be forthcoming.

One of the interesting indications of progress in attaining a more favorable public opinion of the legal profession is the many helpful and laudatory things that have been done in the way of institutional advertising by corporations or concerns having no connection with the American Bar Association. This advertising has usually taken two forms —magazine advertisements, and radio and television performances. These describe such legal activities as the judicial function, the jury system, etc., with excellent "art" and well-written textual matter. In every instance they are accurate, laudatory and praise-worthy, and do a service for the organized Bar which no bar association could possibly render. They are especially effective because, while published and paid for by others without our foreknowledge, they neither seek nor require anything from us in the way of endorsement or sponsorship.

Next year the American Bar Association will celebrate the seventy-fifth anniversary of its founding. To commemorate this event, the Board of Governors has authorized the Committee on Public Relations to initiate the necessary steps to induce Congress to authorize the issuance of a three-cent postage stamp, honoring the American Bar Association. The first sheets of stamps would be released from Saratoga Springs, New York, the city where the Association was founded. This follows the usual practice in the issuance of commemorative stamps. The introduction of this legislation is now under way.

There are many more things, if space permitted, that might be told of the activities of your Committee on Public Relations since the Annual Meeting in New York last September. Others are contained in the Report of the Chairman of the Committee to the House of Delegates at the Mid-Year Meeting on February 25-26, 1952, in Chicago. While the number of copies of this report is limited, we will be glad to respond to requests from interested persons. They should be addressed to Thomas L. Sidlo at 1956 Union Commerce Building, Cleveland 14, Ohio.

Views of Our Readers

■ Members of our Association are invited to submit short communications expressing their opinions, or giving information, as to any matter appearing in the *Journal* or otherwise within the province of our Association. Statements which do not exceed 300 words will be most suitable. The Board of Editors reserves the selection of communications which it will publish and may reject because of length. The Board is not responsible for matters stated or views expressed in any communication.

A "Notable Decision" on Unlawful Practice

■ Attention is called to a notable decision written by Chief Justice Vanderbilt recently for the Supreme Court of New Jersey, *In the Matter of Walter J. Baker and Charles E. Bieber,* who were found guilty of contempt of court for unauthorized practice of law. (December, 1951)

The respondents were, respectively, a Deputy Surrogate and a title searcher, who had prepared a power of attorney for a farmer 80 years of age, under which they secured full control over his property in the event of his becoming mentally incompetent, and had likewise drawn a will for this elderly man in which they were to become residuary legatees.

After stating that its powers over the admission and discipline of members of the Bar would be meaningless and futile if laymen might practice law with impunity, it is said that "the damage which would overtake the public from permitting such unauthorized practice of the law is strikingly illustrated in the present case. The reason for prohibiting the unauthorized practice of the law by laymen is not to aid the legal profession but to safeguard the public from the disastrous results that are bound to flow from the activities of untrained and incompetent individuals, assuming to practice a learned profession which entails years of preparation and without being bound by the high standards of professional conduct and integrity which are imposed on members of the Bar by the Canons of Professional Ethics, which are zealously enforced by the courts for the public good".

EDWIN M. OTTERBOURG

New York, New York

Are There Limitations on Amending the Constitution?

■ The letter of Henry E. Kappler at page 252 in your March, 1952, issue suggests that there are implied limitations on the federal amending power. Up to the present time I have not discovered any decisions of the United States Supreme Court that would support that position. I have argued at length that there are no implied limitations in my article, "The Scope of the Federal Amending Power", 28 *Michigan Law Review* 550-586 (1930); and Orfield, *The Amending of the Federal Constitution* (1942) 83-126, (Callaghan & Co., Chicago).

It seems to me that lawyers suggesting implied limitations are obsessed by unreasonable fears that the very large majorities required to amend the Federal Constitution are going to do something that will destroy our system of government. I do not think that two thirds of Congress and three fourths of the states are suddenly going to favor a totalitarian form of government. If the time should ever come when they did, I suspect that neither the Constitution nor any other legal safeguard could check so extraordinary a majority.

LESTER B. ORFIELD

Temple University
Philadelphia, Pennsylvania

Amendability or Alterability of the Constitution

■ On page 252 of the March issue the writer of a letter to the editor challenges the statement in an editorial in the December issue to the effect that while the Constitution does not protect any Communist in advocating, or conspiring to advocate, the overthrow of the Government by force and violence, the Constitution does guarantee him the right to advocate an amendment to the Constitution to provide a totalitarian government for the United States; and the writer of the March letter further argues that the constitutional guarantee (Art. IV, Sec. 4) of a republican form of government to each state renders such an amendment impossible.

Attention is directed to Pusey, *Charles Evans Hughes,* Volume I, page 386 (The Macmillan Company, 1951) where the author summarizes Justice Hughes' opinion on this subject, as set forth in his brief as *amicus curiae* in the *National Prohibition Cases,* 253 U.S. 350, 354:

> Whether they acted wisely or unwisely, the people had an unlimited right to amend their Constitution as they saw fit . . . . Going back to the records of the Constitutional Convention, he [Hughes] showed that the Founding Fathers drew no distinction between "amendments" and "alterations". By Article V they left the door wide open to *any* change that experience might prove desirable. [Italics added].

Anyone who has read Elihu Root's powerful argument against unlimited amendability of the Constitution in the *National Prohibition Cases,* 253 U.S. 350, 363-367, and the summary rejection of his argument by the Court, can have no reasonable doubt that there are no limits on amendability that can be spelled out by rational argument or wishful thinking. See also the summary of the argument of the Solicitor General in the same case, and authorities cited (Page 382).

There is no particular magic in the words "republican form of government". (See the quotation from Jefferson, 37 A.B.A.J. 450, June, 1951;

and the definition attempted in *Pacific Telephone Company* v. *Oregon*, 233 U.S. 118, 138, footnote). Indeed, the Constitution of the Union of Soviet Socialist Republics would satisfy most definitions of a republican *form* of government because it is laid out in a fairly acceptable representative pattern. In addition, the Soviet Constitution recites an impressive list of so-called freedoms. The totalitarian ingredient is injected not by the *form* of the government so much as by its *administration*.

Jefferson said:

If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it." Richardson, Messages and Papers of the Presidents, Vol. I, p. 310 [Italics added].

In *Schneiderman* v. *U.S.*, 320 U.S. 118, 137, the Court per Mr. Justice Murphy, said:

> The constitutional fathers, fresh from a revolution, did not forge a political strait-jacket for the generations to come. Instead they wrote Article V, and the First Amendment, guaranteeing freedom of thought, soon followed. Article V contains procedural provisions for constitutional change by amendment *without any present limitation whatsoever* except that no State may be deprived of equal representation in the Senate without its consent. [Italics supplied] Cf. *National Prohibition Cases*, 253 U.S. 350. This provision and the many important and far-reaching changes made in the Constitution since 1787 refute the idea that attachment to any particular provision or provisions is essential, or that one who advocates radical changes is necessarily not attached to the Constitution. (See also, *idem.*, pages 143, 144, 157).

And again in the same case the Court said (page 143):

> The 1928 platform of the Communist Party of the United States, adopted after petitioner's naturalization and hence not strictly relevant, advocated the abolition of the Senate, of the Supreme Court, and of the veto power of the President, and replacement of congressional districts with "councils of workers" in which legislative and executive power would be united. These would indeed be significant changes in our present governmental structure—changes which it is safe to say are not desired by the majority of the people in this country—but whatever our personal views, as judges we cannot say that a person who advocates their adoption *through peaceful and constitutional means* is not in fact attached to the Constitution . . . . [Italics supplied]

In the case of the eleven communists (*Dennis* v. *United States*, 341 U.S. 494) Chief Justice Vinson, speaking of the Smith Act, said:

> The obvious purpose of the statute is to protect existing Government, *not from change by peaceable, lawful and constitutional means*, but from change by violence, revolution and terrorism. (page 501) [Italics supplied].

Moreover, the argument made that since the United States in Article IV, Section 4, guarantees to every state a republican form of government, this in itself would prevent amendment to provide for a totalitarian form of government, is untenable. That provision, like any other, is amendable. Furthermore, since *Luther* v. *Borden*, 7 How. 1 (1848), the question of republican form has been held to be a political question, exclusively committed to Congress, and beyond the jurisdiction of the courts. *Pacific Telephone Company* v. *Oregon*, 223 U.S. 118.

Apart from the radical changes in governmental *form* advocated by members of the Communist Party (see *Schneiderman* case, *supra*, 320 U.S. 118, 141, 143), it is common knowledge that there have been, and are, in this country well-meaning advocates of a parliamentary form of government, or of one providing for executive supremacy, with subordination of Congress and the courts. Such changes could doubtless be accomplished by constitutional amendment, although in conflict with the classic statement of Mr. Justice Brandeis in *Myers* v. *U.S.*, 272 U.S. 52, 293:

> The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

The suggestion recorded in Willoughby *On the Constitution*, and referred to in the editorial note on page 253 of the March, 1952, issue of the AMERICAN BAR ASSOCIATION JOURNAL, that "the Supreme Court may yet hold that certain matters are inherently beyond the amending power", has been effectively dashed by the *National Prohibition Cases*, *supra*. (And see the reasoning of Justice Hughes, quoted above). Indeed, Article V, providing for amendments to the Constitution, contains no presently applicable limitation whatsoever, except that "no state, without its consent, shall be deprived of equal suffrage in the Senate"; and a leading constitutional authority has advanced the position that even this limitation may be avoided by a constitutional amendment eliminating this restriction on the amending power, and providing for unequal representation in the Senate. Von Holst, *Constitutional Law*, page 31, note.

The undersigned believes that the December editorial expresses sound constitutional law, distasteful as it may seem in current circumstances to contemplate such a possible amendment; and he believes that nothing is to be gained by putting one's head in the sand and arguing for untenable theories of nonamendability of the Constitution, especially if one understands that totalitarianism is essentially an ideology that does not for its practical application require amendment of a Constitution (witness, for example, the fine paper Constitution of Argentina). Indeed, if, by the necessary vote, an amendment to the Constitution of the United States were actually passed providing for a clearly recognizable *form* of totalitarianism, the issue of constitutionality would have become academic, even if the controversy were technically justiciable in the courts.

In fact, as pointed out in the AMERICAN BAR ASSOCIATION JOURNAL, June, 1951, page 448, under the "general welfare clause" as construed in *Helvering* v. *Davis*, 301 U.S. 619, sustaining federal old age benefits and social security, the majority of the American people can, if they choose,

vote in a socialistic government in the United States, without any constitutional amendment whatsoever, through the exercise of existing powers. See also *U.S.* v. *Gerlach Livestock Company*, 339 U.S. 725, 738.

Let us not forget Franklin's immortal observation after the Constitutional Convention when he was interrogated as to the form of government created in the new Constitution. His answer was: "A republic, if you can keep it."

ALFRED J. SCHWEPPE
Seattle, Washington

Comments on Mr. Bravman's Article

■ I am happy to see Mr. Bravman's most welcome article in the February issue, purportedly in reply to my presentation in the June issue, on the subject "Security for the Professions: A Plan for More Equitable Tax Treatment". If it does nothing more at least it shows an awareness on the part of the legal profession of a problem which continues to plague us. In presenting my plan, and I think the same can be said for the Silverson and other proposals, I did so with the thought of advancing a simple solution without doing violence to our tax structure. We all should be fully cognizant that if a plan is presented to the Congress of the United States which materially changes the concept of taxation, there is very little chance of success.

My plan was frankly based on furnishing relief to members of the professions, for it seemed to me that they were the ones most in need of the legislation. The concentrated and crushing weight of the surtax comes to rest most heavily on them. Therefore, I recommended a device which would permit them to defer to subsequent years the higher income which accrues to them in the few years during which they have reached their professional peak.

* * *

Mr. Bravman advocates his own previously advanced plan of a moving average with the predominant thought of absolutely equalizing the aggregate taxes paid by different individuals with the same aggregate income over the same relative parts of a lifetime. That this device has limitations is recognized by the author himself for he points out in a footnote that if it were extended to the whole income-earning period it might produce results as unfair to the public revenue as the present system does in the case of individual taxpayers.

Even restricted to proportionate periods of a taxpayer's lifetime, the averaging plan is a tax-saving scheme and nothing more. An attempt by inclusive long range statutory provision to meet inequities inherent in the necessity of determining taxable income with respect to fixed periods, without regard to "particular situations", may well miss the mark in one direction as far as do the existing special provisions for individual situations, mentioned by Mr. Bravman, in the other. Surtaxes are, after all, designed to produce revenue in approximate relation to ability to pay. To average all fluctuations in everyone's income, regardless of extent or cause and without limitation, introduces a long departure in existing tax practice. Moreover its effect is cumulative. The result will not be immediate so as to leave taxpayers "free to provide for their retirement in such manner as their circumstances permit". The net result in many cases will be refund of tax revenues previously paid to the Government.

My own proposal was limited to avoiding the impact of high surtaxes on professional earnings because the circumstances inherent in and characteristic of a professional career concentrate that burden with particularly disproportionate weight. The earning period begins much later because of long years devoted to preparation during which there is no return. It is not merely a problem of fluctuation, but of concentrated exposure of the return from professional service to the progressively rising tax rates.

* * *

The plan does not "confuse" equalization of the tax burden and encouragement of the individual to provide for his retirement. Rather it deliberately combines the two in recognition that, so far as the professional practitioner is concerned, they are the two sides of a hard equation.

* * *

My plan is not designed to benefit only those where earned net income is large enough to permit setting aside a fund for retirement after providing for all their needs nor is it believed that it will so operate. It is designed for those who would not have fair opportunity to provide for retirement because of high taxes and directly relates the retirement fund to the tax relief. Its limitations are such as to prevent misuse by those whose income is sufficient to make such relief unnecessary. If it is not of use to those who have made other provisions for the future by way of annuity, insurance or otherwise, it is because they do not need it or have chosen different methods. It is recognized that the immediate demands on many of us are greater than on others. No tax device can meet that problem. My plan was designed for those who peculiarly need permission to project a portion of their earnings for the needs of their declining years in order to escape the concentrated impact of the surtaxes which would otherwise make that security impossible on top of the ordinary needs of existence.

I repeat that I welcome Mr. Bravman's critique of my particular proposal for meeting a problem of mutual concern. Only by common effort can the best solution be ultimately arrived at. If I suggest that my own plan is a more direct and practical one, less disruptive of the established tax system, it is, perhaps, because of my concern for the professional man whom I consider to be the particular victim of insecurity when his short years of earning power decline, and, certainly, in the hope that others, too, will be inspired to give the matter the attention and thought it deserves.

NATHANIEL L. GOLDSTEIN
Albany, New York

Nominating Petitions

Delaware

■ The undersigned hereby nominate William Poole, of Wilmington, for the office of State Delegate for and from the State of Delaware, to be elected in 1952 for a three-year term beginning at the adjournment of the 1952 Annual Meeting:

David F. Anderson, S. Samuel Arsht, E. Ennalls Berl, Henry M. Canby, Leighton S. Dorsey, Howard Duane, Aaron Finger, Joseph H. Flanzer, P. Warren Green, Samuel Handloff, Albert W. James, Samuel F. Keil, James L. Latchum, Caleb S. Layton, Rodney M. Layton, H. Stanley Lynch, William Megonigal, Jr., Hugh M. Morris, Alexander L. Nichols, Frank O'Donnell, Charles L. Paruszewski, Carroll F. Poole, William S. Potter, William Prickett and John P. Sinclair, of Wilmington.

Louisiana

■ The undersigned hereby nominate Cuthbert S. Baldwin, of New Orleans, for the office of State Delegate for and from the State of Louisiana, to be elected in 1952 for a three-year term beginning at the adjournment of the 1952 Annual Meeting:

Howard B. Gist, John L. Pitts, LeDoux R. Provosty and Grove Stafford, of Alexandria;

W. Dan Files and George T. Madison, of Bastrop;

Fred A. Blanche, Ben R. Miller, Harvey H. Posner and Alvin B. Rubin, of Baton Rouge;

A. Wilmot Dalferes, Donald Labbe and Bennett J. Voorhies, of Lafayette;

Richard A. Anderson, W. M. Hall, Jr., and Alvin O. King, of Lake Charles;

Henry Bernstein, Jr., Ronald L. Davis, Thomas W. Leigh, Alden T. Shotwell and J. C. Theus, Jr., of Monroe:

Charles C. Gremillion, John Pat Little, William W. Ogden and Leon Sarpy, of New Orleans.

Nevada

■ The undersigned hereby nominate John Shaw Field, of Reno, for the office of State Delegate for and from the State of Nevada, to be elected in 1952 for a three-year term beginning at the adjournment of the 1952 Annual Meeting:

Milton B. Badt, Frank B. Gregory, John R. Ross and Richard L. Waters, Jr., of Carson City;

James W. Johnson, Jr., and George J. Kenny, of Fallon;

John W. Bonner, Howard W. Cannon, Harry E. Claiborne, William P. Compton, L. O. Hawkins and J. K. Houssels, Jr., of Las Vegas;

Sanford A. Bunce and Clarence L. Young, of Lovelock;

John S. Belford, Alan Bible, Douglas A. Busey, Gordon W. Rice, John P. Thatcher, Bruce R. Thompson, William Woodburn and C. Clifton Young, of Reno;

William J. Crowell, of Tonopah;

Merwyn H. Brown and James A. Callahan, of Winnemucca.

New Mexico

■ The undersigned hereby nominate Floyd W. Beutler, of Taos, to fill the vacancy in the office of State Delegate for and from the State of New Mexico:

Anthony J. Albert, John P. Dwyer, Carl A. Hatch, O. B. Marron, A. H. McLeod, and Fred E. Wilson, of Albuquerque;

A. W. Marshall, of Deming;

E. L. Holt, H. B. Holt, LaFel E. Oman, E. Forrest Sanders, Wayne C. Whatley and Jess D. Weir, of Las Cruces;

William H. Darden, Fred J. Federici and G. W. Robertson, of Raton;

J. D. Atwood, Donald Brown, Jack M. Campbell and Ross L. Malone, of Roswell;

F. A. Catron, William R. Federici, Carl H. Gilbert, William W. Gilbert, Jason W. Kellahin, of Santa Fe.

Oregon

■ The undersigned hereby nominate F. M. Sercombe, of Portland, for the office of State Delegate for and from the State of Oregon, to be elected in 1952 for a three-year term beginning at the adjournment of the 1952 Annual Meeting: .

Ralph R. Bailey, Hugh L. Barzee, Howard K. Beebe, Paul L. Boley, Robert O. Boyd, James Buell, Carl A. Dahl, David L. Davies, Alan F. Davis, Frank E. Day, L. R. Geisler, Robert W. Gilley, Wendell Gray, Charles A. Hart, Randall B. Kester, B. B. Kliks, Gunther F. Krause, R. E. Kriesien, F. J. Kucera, Robert A. Leedy, Robert F. Maguire, Charles E. McCulloch, E. M. Morton, Dewey H. Palmer and Fletcher Rockwood, of Portland.

Rhode Island

■ The undersigned hereby nominate Henry C. Hart, of Providence, for the office of State Delegate for and from the State of Rhode Island, to be elected in 1952 for a three-year term beginning at the adjournment of the 1952 Annual Meeting:

James F. Armstrong, Helen I. Binning, Thomas F. Black, Jr., Woodworth L. Carpenter, Westcote H. Chesebrough, George C. Davis, Edward W. Day, Christopher Del Sesto, Robert B. Dresser, Gurney Edwards, Knight Edwards, Walter A. Edwards, William H. Edwards, Noel M. Field, Douglas W. Franchot, Joseph H. Gainer, Jr., Walter F. Gibbons, John Rae Gilman, Matthew W. Goring, Ronald C. Green, Jr., Felix Hebart, Oscar L. Heltzen, James A. Higgins, James H. Higgins, Jr., and Frank L. Hinckley, of Providence.

Proceedings of the House of Delegates:

Mid-Year Meeting, February 25-26, 1952

■ The House of Delegates, the principal policy-making body of the Association, met for its annual Mid-Year Meeting in Chicago on February 25 and 26. This is a summary of the proceedings of the House, containing, as is our custom, the complete text of all resolutions adopted and an account of all actions taken.

At the first session, the House heard the reports of the Budget Committee, the Committee on Special Gifts, the Committee on Ways and Means, the Committee on Televising and Broadcasting Legislative and Judicial Proceedings, the Junior Bar Conference and the Committee on Military Justice. It took action to authorize the securing of a site for a new Association Headquarters Building and Law Center near the University of Chicago, voted to increase Association dues, and considered the important report of the Committee on Communist Tactics, Strategy and Objectives.

FIRST SESSION

■ The 1952 Mid-Year Meeting of the House of Delegates of the American Bar Association convened at 10:00 A.M., February 25 at the Edgewater Beach Hotel in Chicago, Illinois. Roy E. Willy, of South Dakota, the Chairman of the House, presided.

After the roll call by Secretary Joseph D. Stecher, of Ohio, Glenn M. Coulter, of Michigan, Chairman of the House Committee on Credentials and Admissions, reported that seven state bar associations had applied for an increase of their delegate representation in the House. Mr. Coulter said that the associations had presented proof satisfactory to the Committee that the lawyer population in those states entitled them to additional delegates and moved that the following increases be granted: The Florida Bar, two additional delegates; Georgia Bar Association, Kentucky State Bar Association, Louisiana State Bar Association, Maryland State Bar Association, Nebraska State Bar Association and Wisconsin Bar Association, one additional delegate each. The House voted to grant the increases.

Mr. Coulter moved that the Multnomah Bar Association, of Oregon, be admitted as an affiliate of the American Bar Association, entitled to representation in the House. The motion was carried.

On the motion of David F. Maxwell, of Pennsylvania, Chairman of the Committee on Rules and Calendar, the House approved the record of its last meeting.

Three resolutions were then presented for reference to the Committee on Draft. The nature of these resolutions and action taken on them by the House are reported at page 440.

William W. Evans Reports for Budget Committee

William W. Evans, of New Jersey, Chairman of the Board of Governors' Committee on the Budget gave the report of that Committee. He said that the Association's estimated revenues for the fiscal year were $392,000 with estimated expenditures at $420,000, making an overappropriation of $28,000. Additional appropriations amounting to $16,700 had been made to certain committees which were doing extremely important work, making a total deficit of nearly $45,000. Mr. Evans explained that the Committee overestimated expenditures and underestimated income, so that the Association's books generally balanced at the end of the fiscal year, due to lapse of unspent appropriations. He called attention to the fact that expenses this year were running from 10 to 31 per cent higher than last year and that more money was absolutely necessary if the work of the Association was to be carried on properly. His Committee supported the Board of Governors' proposal to increase dues, he said.

The House voted to accept the Committee's report.

Harold J. Gallagher, of New York, then reported for the Committee on Special Gifts, of which he is Chair-

man. He recalled that his Committee had been appointed, after the New York Annual Meeting, to study plans for obtaining funds from nonmembers of the profession for use for a new Headquarters Building. Calling attention to the urgent need for such a building, Mr. Gallagher said that his Committee envisioned a new structure that would not only satisfy the housing needs for carrying on the administration of the Association but would also serve as a center for research in the law and related fields. He said that a joint conference of the President, Board of Governors, Ways and Means Committee, Special Gifts Committee, Scope and Correlation Committee, of the various Sections of the Association and the American Bar Association Endowment had been held just before the Mid-Year Meeting and had adopted a resolution favoring such a legal center.

The President of the Association, Howard L. Barkdull, of Ohio, spoke briefly on the project for a legal center recommended by Mr. Gallagher's Committee, calling it "one of the most important that has ever been before the American Bar Association".

George Maurice Morris, of the District of Columbia, moved the adoption of the following resolution of the Joint Conference:

> RESOLVED, That a committee of seven persons, consisting of the President of the Association and a member of each of the following: the Board of Governors' Budget Committee, the Standing Committee on Scope and Correlation of Work, the Standing Committee on Ways and Means, the Special Committee on Special Gifts and the Special Committee on Headquarters and Building Location, together with a representative of the American Bar Association Endowment, selected by the President of that Endowment, be appointed by the President of the Association to present to the House of Delegates at its next meeting, a plan or alternative plans for the acquisition or construction of a building or buildings to house the administrative offices of the Association and the personnel and equipment of such activities as properly come within the jurisdiction of the Association and of the Endowment, as may be agreed upon from time to time between the House of Delegates of the Association and the Board of Directors of the Endowment; and be it further
>
> RESOLVED, That the Committee so appointed be directed to present to each of the following: the Board of Governors, the Standing Committee on Scope and Correlation of Work, the Standing Committee on Ways and Means, the Special Committee on Special Gifts, the Special Committee on Headquarters Building and Location and the American Bar Association Endowment, a report of the plan or alternative plans aforesaid, on or before June 1, 1952.

The House voted to adopt the resolution without debate.

Ways and Means Reports on Site for New Headquarters

W. E. Stanley, of Kansas, then reported for the Committee on Ways and Means, of which he is Chairman. He read a letter to the House from the Central Administration of the University of Chicago offering a tract of land near its campus as a site for the proposed new Headquarters Building and Law Center, subject to agreement of the Association and the University on matters of detail. Mr. Stanley said that the lot had a frontage of 288 feet on the Midway, a depth of 206 feet, and was variously estimated in value between $350,000 and $750,000. He moved adoption of the following resolution, which was taken up by the House paragraph by paragraph:

> WHEREAS, the House of Delegates has instructed the Ways and Means Committee to study, investigate and report back to the House its findings and recommendations re a new headquarters building; and
>
> WHEREAS, for four years the Ways and Means Committee has explored various locations and proposals; and
>
> WHEREAS, in the opinion of the Ways and Means Committee the most important matter pending before the American Bar Association is the acquisition of an adequate and appropriate headquarters building so that the very important business of the Association may be expedited and properly carried on; and
>
> WHEREAS, as a corollary question, the raising of dues of the Association has been intensely studied;
>
> NOW, THEREFORE, BE IT RESOLVED, That the special committee of seven authorized this day by the House be authorized to accept the offer of the University of Chicago as contained in the letter of February 20 of that institution, of a location consisting of 288 feet by 206 feet, if, in the judgment of the committee, the terms and conditions are satisfactory and if the location meets the need of the American Bar Association.
>
> BE IT FURTHER RESOLVED, That the present headquarters building be sold at the appropriate time; and
>
> BE IT FURTHER RESOLVED, That regular dues of the Association be increased from $12.00 for senior members and $6.00 for membership for those who have been at the Bar less than five years, and $3.00 for those who have been at the Bar less than two years, to $16.00, $8.00 and $4.00 respectively; that the Board of Governors be respectfully requested to give consideration to allocating to the Building Fund a portion of the increased dues; and that the Membership Department be authorized to accept, without writing back for additional checks, all applications received prior to the convening of the 1952 Annual Meeting, which come in on forms heretofore distributed, and approved by this House; and
>
> BE IT FURTHER RESOLVED, That the special committee of seven appointed to report on a plan for the acquisition of a Headquarters site be instructed to recommend such means as it deems best to raise the additional funds to build a headquarters building.

The resolution is printed here in the form finally adopted by the House and includes amendments offered by George Maurice Morris, seconded by Cody Fowler of Florida, and by Mr. Stanley.

The House debated the proposal to increase dues contained in the seventh paragraph of the resolution at some length. Amendments were offered by Harold H. Bredell, of Indiana; James R. Morford, of Delaware; and J. Helen Slough, of Ohio. The decision to admit new members at the old rates if they filed applications for membership on the old application forms was made because of the number of forms sent out in recent months by the Committee on Membership and the great burden that would have been put on the Headquarters office if they had had to return all such applications with a request for additional dues. Messrs. Stone, of Mississippi; Gib-

son, of Minnesota; Teiser, of Oregon; Woolfenden, of Michigan; Smith, of New Jersey; Wuerthner, of Montana; and Maxwell, of Pennsylvania, also participated in the debate.

Committee on Television Proposes Amendment of Judicial Canons

Joseph W. Henderson, of Pennsylvania, then presented the report of the Committee on Televising and Broadcasting Legislative and Judicial Proceedings in the absence of the Committee Chairman, John W. Davis, of New York. He said that his Committee had determined not to make any recommendations concerning televising or broadcasting the proceedings of legislative bodies as such, feeling that that was properly a matter to be decided by Congress and the state legislatures themselves, but that the televising of legislative investigations and judicial proceedings involves private rights of the citizens. In reply to a question put by P. Warren Green, of Delaware, Mr. Henderson said that his Committee was also opposed to making tape recordings in court for rebroadcasting. He offered the following resolutions, which were adopted by the House:

> RESOLVED, That the American Bar Association condemns the practice of televising or broadcasting the testimony of witnesses when called before investigating committees of Congress and recommends that appropriate action be taken to restrict or prevent it.
>
> RESOLVED, That the American Bar Association condemns the practice of televising or broadcasting judicial proceedings and recommends that Canon 35 of the Canons of Judicial Ethics be amended to read as follows:
>
> "Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting *or telecasting** of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted."

The House then turned to the report of the Junior Bar Conference, given by the Conference Chairman, Paul W. Lashly, of Missouri. Mr. Lashly spoke briefly on the American Law Student Association, saying that [as of February 25] it had chapters at eighty-six of the 121 approved law schools in the United States, amounting to a membership of 35,000 law students. He said that the members of the House might be called upon to assist the Conference in securing the membership of the remaining thirty-five law schools and asked for their co-operation if approached.

Arthur E. Farmer, of New York, Chairman of the Committee on Military Justice, reported that the Committee had conferred with the Judge Advocates General of the three Armed Services on the problem of command control of courts martial. At his request, the House gave unanimous consent to Major General Reginald C. Harmon, the Judge Advocate General of the Air Force, to present the views of the Services on the subject, which are opposed to those of the Committee and to the policy of the Association as expressed in resolutions adopted at former meetings of the House. General Harmon stressed the necessity for discipline in the Armed Forces and praised the new Uniform Code of Military Justice, which, he said, protects the rights of the serviceman "as much as or more than the criminal court in civil life". The Judge Advocates General disagree violently with the stand of the Committee on command control, he said, and he urged that the new Code be given a two years' trial before any further attempt was made to change it.

Speaking for the Committee, Chairman Farmer said that it was impossible to obtain a fair court-martial trial for an accused so long as his commanding officer was allowed to appoint the court martial. The new Code has not changed that flaw in military justice, he said, and, unless instructed otherwise by the House, his Committee would continue its efforts to secure elimination of command control. Blakey Helm, of Kentucky, also spoke in support of the Committee's position.

Committee on Communist Tactics Presents Its Report

Austin F. Canfield, of the District of Columbia, Chairman of the Committee on Communist Tactics, Strategy and Objectives, reporting for that Committee, said that the *Brief on Communism* which it had prepared had been printed by West Publishing Company for public circulation. Some 54,000 copies have been distributed so far, he reported, and have had an enthusiastic response from educators, labor leaders, businessmen and the press. He reported that the American Federation of Labor wants 1,000,000 copies for distribution and the United States Chamber of Commerce has indicated that leaders of business and industry want another million for distribution in schools and colleges. He offered the following resolution:

> RESOLVED, That the American Bar Association publicly acknowledges, with deep appreciation, the action of the West Publishing Company of St. Paul, Minnesota, in printing at its own expense the Association's "Brief on Communism: Marxism-Leninism, Its Aims, Purposes, Objectives and Practices" together with the committee's report thereon, which are now being distributed to the membership and to the general public. We record this as a public service in the fight against communism.

The resolution was adopted by the House.

Mr. Canfield then offered a second resolution as follows:

> WHEREAS, The Special Committee To Study Communist Tactics, Strategy and Objectives has, since its appointment, observed and studied the work of the House Un-American Activities Committee as evidenced by the official transcripts of testimony adduced at public hearings, based upon which it is our view that the constitutional rights of witnesses have been protected by that congressional committee; and,
>
> WHEREAS, This Association's committee believes that it is in the interest of the people of the United States that any person heretofore a member of the Communist Party, who has withdrawn therefrom and completely renounced the principles of Marxism-Leninism, come forward and testify before any accredited governmental

* Italicized words added

agency as to the facts within his knowledge and experience of the activities of the Communist Party, its members and followers;

BE IT RESOLVED, That the American Bar Association express its approval of the manner in which the investigation and hearings by the present Committee on Un-American Activities of the House of Representatives and the Subcommittee of the Senate Judiciary Committee on the Internal Security Act are now being conducted and we commend said committees for their continuing inquiry into the activities of the Communist Party, its members and followers, in order to establish a basis for appropriate legislation; and,

BE IT FURTHER RESOLVED, That the American Bar Association lend its moral support and encouragement to any person now or heretofore a member of the Communist Party or who in any wise embraced the doctrines of Marxism-Leninism and who is now desirous of coming forth and testifying under oath in order to expose its conspiratorial aims and purposes.

Explaining the purposes of this resolution, Mr. Canfield said that the House Un-American Activities Committee has been attacked because of its own alleged breach of constitutional and other legal guarantees of freedom of speech. His Committee have studied the present operations of the committee in great detail and are satisfied that, as now functioning, it is doing a fine job within the traditions of the American lawyer and the American people. The Committee was also trying to deal with the problem of the reformed Communist who is attacked in the press because he has testified as to what he knows about the Communist Party. Declaring that the Communist Party today is "masterminded by fifteen to twenty lawyers in different parts of the country", Mr. Canfield said that he wanted to make it plain that his Committee were not attacking a lawyer because he champions an unpopular cause, despite accusations from some quarters that that was the case.

The House recessed at 12:30 P.M.

SECOND SESSION

■ At this second session, the House of Delegates heard the remainder of the report of the Committee on Communist Tactics, and the reports of the Committee on Retirement Benefits for Lawyers, the Committee on Lawyer Referral Service, the Committee on Co-ordination of Bar Activities, the Committee on Judicial Selection, Tenure and Compensation, the Section of Patent, Trade-Mark and Copyright Law, the Section of Judicial Administration, the Commission on Organized Crime, the Committee on Unauthorized Practice of the Law, the Committee on Income Taxation, the Committee on American Citizenship, and the Committee on Public Relations. Much of this session was taken up with debate over a constitutional amendment to limit individual income taxes to 25 per cent except in time of national emergency.

■ The House reconvened for its second session at 2:00 P.M. on Monday, February 25, with Chairman Willy presiding.

Austin F. Canfield completed the report of the Committee To Study Communist Tactics, Strategy and Objectives.

Charles S. Rhyne, of the District of Columbia, moved to add the words "and the Subcommittee of the Senate Judiciary Committee on the Internal Security Act" after the words "House of Representatives" in the third paragraph of the Committee's second resolution (column 1 *supra*). Mr. Rhyne said that the Senate subcommittee, of which Senator McCarran is Chairman, is conducting its inquiry into the exposition of Communist activities in a dignified, lawyer-like way, with full recognition of all the constitutional rights of those they call before them. He said that he hoped the Association would include them in the resolution. Mr. Rhyne's amendment was accepted by Mr. Canfield.

Whitney North Seymour, of New York, proposed an amendment to the resolution which would have omitted approval of the procedure of the committees and any implication that the House had studied the procedure and found it to be constitutional. He said that he did not think that the House of Delegates should undertake to give blanket approval to the procedure of any legislative committee, particularly since it did not have before it a statement of the rules under which the House committee operates. His amendment would have endorsed the purposes of the House committee and encouraged its pursuit of Communists, but would have reserved for the House of Delegates, upon the basis of more information, a decision as to whether the procedure of the committee wholly met the standards that should be applicable to such committees.

Tracy E. Griffin, of Washington, a member of Mr. Canfield's Committee, spoke in opposition to Mr. Seymour's amendment. He declared that the current strategy of the Communist Party was an attack on the Senate and House committees and declared that the National Lawyers Guild had adopted resolutions condemning these committees for their activities and their methods. He was opposed to standing with the Guild on the matter, he said.

Cuthbert S. Baldwin, of Louisiana, said that the Canfield Committee had considered the matter from every angle and that action should not be postponed.

Mr. Canfield, closing debate on the resolution, cited one or two examples of the operations of the House committee and called upon the House to lend its support to the congressional investigations.

Mr. Seymour's amendment was defeated, and the resolution was adopted with Mr. Rhyne's amendment.

Retirement Benefits Committee Reports on Reed-Keogh Bills

George Roberts, of New York,

Chairman of the Committee on Retirement Benefits for Lawyers, reporting for his committee, said that it had been in touch with nearly forty organizations of professional and self-employed persons on the subject of the Reed-Keogh Bills. These bills would provide for a system of income tax exemption for certian sums set aside by self-employed citizens to provide for their security later in life. They received the Association's support at the New York meeting. Mr. Roberts said that the response had been universally favorable. The committee is trying now to get the House Ways and Means Committee to approve the concept of the bills, a task made more difficult by congressional opposition to any new tax legislation this year.

The House then turned to the report of the Committee on Unemployment and Social Security, given by its Chairman, Allen L. Oliver, of Missouri. He reported that his Committee was opposing the Moody-Dingell Bill and similar bills now pending in the Congress, declaring that their adoption would be a first step toward federalizing of unemployment compensation, would put an additional and unnecessary strain upon the federal treasury and would be the beginning of the elimination of the experience rating, so valuable both to industry and labor. He mentioned a bill pending in the Congress, S. 2481, commonly called the Lodge Bill, which would bring lawyers into the Social Security System, and said that he hoped that the members of the House would obtain the sentiment of the lawyers of the country on this proposal.

He then moved the adoption of the following resolution, which includes language suggested by the Board of Governors:

> That the matter of approval or disapproval of the inclusion of lawyers under Social Security Act as proposed in the Lodge Bill 2481 be brought before the Association as its next Annual Meeting for discussion and vote; and that the Committee be authorized and directed to request the Senate Finance Committee to defer action on the Lodge Bill until after the Annual Meeting of the Association.

The House voted to adopt the resolution.

The report of the Committee on Lawyer Referral Service was delivered by W. H. Jack, of Texas, a member of the Committee. He reported that the Committee had arranged a conference of representatives of the different lawyer referral services and other state and local bar association officers to consider the problems of establishing, operating and stimulating the use of the lawyer referral plan throughout the country. The conference adopted a code of basic principles which sets forth the minimum requirements for the establishment and operation of the plan. Another objective of the Committee, he said, was the establishment of the plan in the hundred cities throughout the country that have a population of more than 100,000. He reported that forty-five of the hundred had already established lawyer referral plans and that more were expected to do so before the Annual Meeting in September.

House Hears Report of Co-ordination Committee

Edward H. Jones, of Iowa, Chairman of the Committee on Co-ordination of Bar Activities, presented a resolution, which was adopted by the House. As amended as suggested by the Board of Governors and approved by the Committee, it reads as follows:

> That a proof or other copy of every report or publication made or issued by any Association Committee or Section shall be filed promptly in the Headquarters Office; that the Committee on Co-ordination of Bar Activities shall have access to such reports and shall have primary responsibility for the dissemination of all such publications which may be determined to be in furtherance of the co-ordination program; that any expense in preparing copies of such documents for dissemination shall be borne by the Committee on Co-ordination of Bar Activities if the committee or section does not see fit to assume such expense.

A second recommendation of the Co-ordination of Bar Activities Committee was referred to the Committee on Publications at the suggestion of the Board of Governors. This called for making all reports or publications issued by any Committee or Section uniform as to format and would have authorized the Board of Governors to prescribe standards for procurement and publication.

Morris B. Mitchell, of Minnesota, Chairman of the Committee on Judicial Selection, Tenure and Compensation, called upon the House to endorse legislation providing for payment of annuities to widows of federal judges. He explained that this had been proposed by his Committee at the New York Annual Meeting and had been deleted by a vote of the House on motion from the floor upon which there was no debate. He said that since then several members who voted to delete the proposal had written requesting that the matter be resubmitted at the Mid-Year Meeting of the House. He moved the adoption of the following resolution, which incorporates changes recommended by the Board of Governors:

> RESOLVED, That the House of Delegates of the American Bar Association reaffirms its action taken February 28, 1950 and, recommends that the Congress of the United States enact S. 16, providing for payment of annuities to widows of federal judges and justices.

Charles H. Woods, of Arizona, said that he understood that many federal judges did not want this legislation at this time. James M. Barnes, of the District of Columbia, replied for the Committee, explaining that some members of Congress had differences of opinion as to whether the pension should be contributory or not, but that it was felt that that was a question for the Congress to decide. He said that some judges had feared that this legislation might conflict with proposals to increase judicial salaries, but that there was little chance of an increase in salaries in an election year, whereas there was some chance that the pension plan might be approved.

President Barkdull said that he had talked with Chief Justice Vinson

on the matter and that the Chief Justice had told him that a large majority of the federal judges were highly desirous that the legislation be enacted.

The House voted to adopt the resolution.

Two Resolutions of Patent Section Are Adopted Without Debate

Norman N. Holland, of New York, Chairman of the Section of Patent, Trade-Mark and Copyright Law, presented two resolutions for his Section which were adopted without debate. They were as follows:

I

RESOLVED, That Article 2, Section 1 of the by-laws of the Section of Patent, Trade-Mark and Copyright Law be amended by changing therein "$3.00" to "$5.00."

II

RESOLVED, That the Association approves the principle of tolling the statute of limitations, with respect to patent infringement committed by or on behalf of the government, during the pendency of a claim with a government department for compensation or for an administration award.

In order to change the law to achieve the above principle, the Association specifically approves the following addition to Section 246 of H.R. 3760, which is a pending bill on codification of the patent laws:

"With respect to infringement of a patent committed by or on behalf of the Government, the period between the date of receipt by a Government department or agency of a written claim for compensation for such infringement and the date of mailing by the department or agency of a notice to the claimant that his claim has been denied, shall not be counted as part of the six years."

FURTHER RESOLVED, That the Section chairman be authorized to communicate to interested parties the action of the Association in adopting this resolution.

With respect to the second resolution, Mr. Holland explained that it is now the common practice for the Government to attempt to adjust any claims for infringements before institution of suit. However, if the Statute of Limitations is about to run, it is necessary for the claimant to institute suit to avoid having its claim nullified by the statute. When the suit is filed, the negotiations must be discontinued because the Department of Justice takes over at that point and the attempt at compromise must be discontinued. He said that the resolution had the approval of his Section and of the Armed Forces, the government agencies that deal primarily with this particular problem.

Cody Fowler, of Florida, presented the report of the Committee on Admiralty and Maritime Law in the absence of its Chairman, Arnold W. Knauth, of New York. He proposed the following resolution which was adopted without debate:

That the House approve the memorandum presented by the committee in support of the admiralty rules and the holding of an open meeting to discuss this matter in New York in May, 1952.

Judge Richard Hartshorne, of New Jersey, Section Delegate of the Section of Judicial Administration, offered the following resolution for his Section:

BE IT RESOLVED: That in order to permit the House of Delegates to be informed of the viewpoint of the Section of Judicial Administration and of the Federal Judiciary throughout the United States with regard to the applicability of the Federal Rules of Civil Procedure to admiralty practice, the House of Delegates suspend the action taken in that regard at its New York City sessions last fall, until the forthcoming 1952 sessions in San Francisco.

He said that the subject of applying the Rules of Civil Procedure to admiralty practice had been acted upon at the last meeting of the House before the Section of Judicial Administration had been heard on the matter. The Section felt that the House should have the viewpoint of the judges who sit on all the admiralty cases.

Mr. Fowler said that the Admiralty Committee had no objection to the Section's resolution, and the House voted to adopt it.

Commission on Organized Crime Offers Three Resolutions

Walter P. Armstrong, Jr., Chairman of the Commission on Organized Crime, then reported for that group. He offered the following resolutions, which are printed as amended in accordance with suggestions of the Board of Governors and an amendment offered from the floor by Frederic M. Miller, of Iowa. These suggestions were accepted by Mr. Armstrong and the resolutions were duly adopted as amended.

I

RESOLVED, That the Commission on Organized Crime, in the name of the American Bar Association, call the attention of the presidents of state and local bar associations represented in the House of Delegates to the urgent need for action against members of the bar who, as public officials or in their private practice, foster organized crime, engage in unethical practices, attempt to bring undue or improper influence on public officials or become party to any action or activity which would bring the law into disrespect or bring disrepute upon the bench or bar;

II

RESOLVED, FURTHER, That the Commission on Organized Crime in the name of the American Bar Association call the attention of the presidents of state and local bar associations represented in the House of Delegates to those portions of the testimony before the Special Senate Committee to Investigate Crime in Interstate Commerce which raised serious questions about the propriety of the actions of some members of the bar in connection with such activities.

With respect to the Commission's third recommendation, the Secretary called attention to the statement in the mimeographed report of the Board of Governors that a special committee had been authorized to study, in co-operation with the Conference of Bar Association Presidents, the matter of formulating model grievance and disciplinary procedures to the end that there may be uniform and effective enforcement of the standards of conduct prescribed by the canons of professional and judicial ethics. The Secretary recommended that the Commission's third recommendation be referred to this new committee and that the jurisdiction of the committee be amplified to embrace the subject matter of the Commission's resolution.

Mr. Armstrong accepted this rec-

ommendation, and the House voted to follow the Secretary's suggestion.

John D. Randall, of Iowa, Chairman of the Committee on Unauthorized Practice of the Law, summarized the mimeographed report of his Committee and offered the following resolutions which were adopted:

I

RESOLVED, That the American Bar Association, in cooperation with the Association of American Law Schools, establish a conference to be known as "the Joint Conference on Professional Responsibility," consisting of five members from each Association;

II

RESOLVED, That this Association join with the American Life Convention and the Life Insurance Association of America in establishing a conference to be known as the "Conference of Lawyers and Life Insurance Companies" to implement the National Statement of Principles of cooperation between life underwriters and lawyers, with power to take such further steps as may be necessary to bring such program to the attention of the American Bar Association, the National Association of Life Underwriters, the Society of Chartered Life Underwriters, and Life Insurance Companies.

III

BE IT RESOLVED, That the committee be discharged from further responsibility in recommending a method for the listing of lawyers.

House Debates Proposal To Limit Income Tax

The House then turned its attention to the Report of the Special Committee on Income Tax Amendment, given by the Committee Chairman, William Logan Martin, of Alabama. Mr. Martin said that his Committee was proposing an amendment to the Constitution that would limit the power of the Congress to levy income taxes. The proposed limitation would be fixed at 25 per cent of the taxpayer's annual income, with the provision that Congress, by three-fourths vote could fix a rate not in excess of 40 per cent for periods of one year in peacetime and could suspend the limitation in wartime. The amendment would also eliminate the federal estate and gift taxes. He said that one reason for the proposed amendment was to forestall a proposed constitutional convention, which has been proposed by the legislatures of twenty-eight states out of the necessary thirty-two, and which is felt to be dangerous. As for the necessity for such a constitutional amendment, Mr. Martin said that the federal budget has become so vast and so complicated that no one person can understand it, that the Federal Government is using its revenue to invade provinces traditionally belonging to the states, and he cited instances of waste and needless expenditure of federal funds. He moved the adoption of the following resolution:

WHEREAS, the burden of federal taxation has become greater than at any prior period in our history, resulting in discouragement to our traditional freedom of enterprise system and falling heavily on both those with small incomes and those with large incomes;

WHEREAS, the taxes imposed by the federal government are destroying incentive and drying up the sources of capital on which our system of private enterprise depends, which will ultimately lead to the destruction of that system;

WHEREAS, the taxes which are causing the greatest harm in this connection are (1) the income tax and (2) the estate or death tax; and,

WHEREAS, past experience has demonstrated that the evils of the present system of taxation will not be corrected without a constitutional amendment limiting the taxing power of Congress;

NOW THEREFORE, be it resolved by the American Bar Association, that Congress be urged and requested to submit for ratification by the legislatures of the states an amendment to the Constitution of the United States which will limit the power of Congress to levy and collect taxes on incomes, inheritances and gifts and in substantially the form attached to this report.

RESOLVED FURTHER, that a copy of this resolution and report be sent to each Senator and member of the House of Representatives and to each presiding officer of the respective houses of each state legislature.

RESOLVED FURTHER, that the President of the Association be authorized to appoint a committee of not less than ten nor more than fifteen, to undertake to secure the submission of such amendment to the states.

The House then gave Robert B. Dresser, of Rhode Island, a member of the Special Committee, unanimous consent to address the House in favor of the resolution. He declared that the issue was "no less the important question of whether we are going on with our private enterprise system, on which our living depends, or whether we are going to accept the totalitarian idea of socialism which has driven England to the lowest depths". He declared that excessive taxation is destroying the free enterprise system and held that the proposed amendment would increase the national wealth and federal revenue. He called attention to the fact that a high income tax was one of the means relied upon by Marx and Engels to destroy the capitalist system.

Charles H. Woods, of Arizona, speaking for the resolution, mentioned the dangers of a new constitutional convention.

Frank W. Grinnell, of Massachusetts, said that he was not convinced of the wisdom of the proposals—he compared the amendment to sewing up the pocket instead of the hole in it—but said he felt that the dangers of a new convention were so great that he thought the resolution should be adopted.

Samuel H. Liberman, of Missouri, speaking against the resolution, said that it was a drastic change and that he believed that members of Congress could be trusted to lower the income tax rate as soon as possible. He called the proposal a "cynical confession of failure in representative government" and cited Hamilton's injunction that "every government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care. . . ."

A. L. Merrill, of Idaho, replied that we had drifted from a government to a "giverment" and that the tremendous burden of federal taxes was cutting into states' rights.

John C. Satterfield, of Mississippi, said that adoption of the resolution

would not indicate any lack of confidence in our representative form of government. He pointed out that the framers of the Constitution had supported the first ten amendments which were limitations on the Congress and asked whether they had had any lack of confidence in representative government.

The question was called for, and the House voted to adopt the resolution.

Richard Bentley, of Illinois, reported briefly for the Section of Legal Education and Admissions to the Bar.

F. M. Sercombe, of Oregon, reported that the Section of Bar Activities had nothing to bring before the House.

John C. Cooper, of New Jersey, Chairman of the Committee on American Citizenship, said that Congress had acted to combine "I Am an American Day" with "Constitution Day" and set September 17, the anniversary of the signing of the Constitution, as the day for celebrating "Citizenship Day". This was urged in a resolution adopted by the House of Delegates at the 1950 Annual Meeting. He reported that his Committee was continuing to study the problems of naturalization and was making an analysis of the practices in the states to determine the extent that legislation requires and provides for teaching school students about the Constitution.

Public Relations Committee Makes Oral Report

Thomas L. Sidlo, of Ohio, Chairman of the Committee on Public Relations, summarized the progress his Committee is making, calling the attention of the members to a booklet put out by the Committee called "Public Relations of the Bar Association", intended for use by state and local associations as well as by the American Bar Association.

President Barkdull, in his report to the House, stressed the importance of the Association's living within its income and requested Sections and Committees to ask for as little additional appropriations as they could.

Secretary Stecher summarized the report of the Board of Governors, most of which dealt with administrative matters and the Board's action on matters coming before the House from the Sections and Committees. He read the following resolution, which the Board had adopted:

> BE IT RESOLVED, That the Board of Governors of the American Bar Association expresses cognizance of the special responsibility which devolves upon the legal profession when the paramount demands of our national security come into conflict with the exercise of the rights of the individual citizen, which are the cornerstone of our form of government.
>
> The Board of Governors therefore recommends to the House of Delegates that a special committee of the Association be created to be known as "The Special Committee on Individual Rights as Affected by National Security." The committee shall make such recommendations to the Association, and with the approval of the House of Delegates or Board of Governors shall take such action, as may be deemed appropriate to bring about the best possible balance between the demands of national security and the exercise of the freedom of the individual citizen.

On Mr. Stecher's motion, the House voted to approve the report of the Board of Governors.

Mr. Bredell gave the Treasurer's Report, saying that the Association's income has increased $28,000 over the same period for last year; $20,000 of that sum is apportioned to the general fund and $8,000 to the JOURNAL. Most of this increase came from new memberships. He pointed out that expenditures had increased, however, and that there was a real danger of running into a deficit.

James D. Fellers, of Oklahoma, moved that the House express its opinion to the Board of Governors that the Board should endeavor to fix the date of the Annual Meeting each year as near the middle of August as feasible, starting with the 1953 Annual Meeting.

The motion was carried.

The House then recessed at 5:25 P.M.

THIRD SESSION

■ This session was largely devoted to debating the proposals of the Committee on Civil Service and the Section of Taxation, the argument centering around proposals to endorse reorganization of the Bureau of Internal Revenue and to put most of its personnel under civil service. The reports of the Survey of the Legal Profession and the American Law Institute were also given.

■ The House of Delegates reconvened for its third session at 8:00 P.M. February 25 with Chairman Roy E. Willy presiding.

Murray Seasongood, of Ohio, Chairman of the Committee on Civil Service, presented the report of his Committee. The first resolution he offered favored placing Collectors of Internal Revenue under the civil service system. Mr. Seasongood said that the recent revelations of corruption in the Bureau of Internal Revenue showed the need for removing the collectors from political patronage control.

Morton P. Fisher, of Maryland, Chairman of the Section of Taxation, said that the proposal of the Civil Service Committee failed to preserve the right of jury trial in tax cases, which his Section considered to be a matter of grave importance. He said that, at present, jury trial can be had since suits are filed against the collectors as individuals, but that changing their status to civil service employees would make them merely agents of the Secretary of the Treasury and there was serious doubt whether in that status they would be amenable to suit as individuals. If they were not, he explained, the right of jury trial might be lost because of the doctrine of sovereign immunity. His Section has considered the problem, he continued, and he moved that action on Mr. Seasongood's resolution be deferred until the plan of the Section of Taxation was presented.

In reply to a question put by

David F. Maxwell, of Pennsylvania, Mr. Fisher said that his Section did not favor adoption of the Civil Service proposal even if it were amended to contain language to preserve the right to sue the Collectors. The plan of his Section was comprehensive, he explained, and could not be taken up piecemeal. He wanted the plan taken up as a whole.

Robert F. Maguire, of Oregon, inquired why the right to trial by jury depended upon whether the Collector was a political appointment or a civil service employee.

Mr. Fisher replied that, under the old system, the Collector has a commission with a particular tenure of office and has certain rights and duties in the collection of taxes in his own right. Under Civil Service, he would have only such duties as the Secretary of the Treasury might delegate to him. It was the view of his Section that this change would cast grave doubt on the preservation of the right of jury trial.

Cody Fowler, of Florida, moved that the resolution be deferred until after the report of the Section of Taxation.

Mr. Seasongood, speaking against Mr. Fowler's motion, said that the Reorganization Plan of the Bureau of Internal Revenue, which was the subject of the Section's plan, was a separate matter. He was willing to accept an amendment to his resolution, adding the words "provided the right to trial by jury is preserved", he said, but the Bar would be very remiss if it did not approve the general idea of having Collectors appointed according to merit instead of on recommendation of local political machines.

The House then voted down Mr. Fowler's motion to defer action.

Whitney North Seymour, of New York, then moved to amend Mr. Seasongood's resolution to provide that the change in the method of selection should not affect the method of presentation or prosecution of claims. This would, Mr. Seymour said, reconcile the views of the two committees. Mr. Seasongood accepted the amendment. Mr. Fisher offered a further amendment to the effect that there should be a right of trial by jury against the United States. Mr. Seasongood accepted that also.

H. Cecil Kilpatrick, of the District of Columbia, said that if the second resolution in the Tax Section's report were substituted for that of the Committee it would contain the substance of the proposed Committee resolution with the proposed amendments included.

Floyd E. Thompson, of Illinois, objected to the amendments, saying that the Committee's resolution should be considered apart from the jury-trial question.

William A. Sutherland, of the District of Columbia, spoke in opposition to the resolution. He said that the recent scandals had caused public hysteria and that the House should not yield to that and take hasty action in favor of putting tax collections in the hands of a bureaucracy. He agreed with Mr. Fisher that the proposed change might endanger the right of jury trial in tax cases.

Phil Stone, of Mississippi, said that he was opposed to the resolution. He declared the bureaucrats always seized upon public hysteria as a means of extending their power.

The House then voted not to adopt the Committee's resolution as amended.

Mr. Thompson moved that it be adopted without the amendments, and this motion was also lost.

House Considers Resolution To Put Treasury Under Civil Service

Mr. Seasongood then offered his second resolution. This would have put the Association on record as favoring the Hoover Commission's proposal that all officials in the Treasury Department below the rank of Assistant Secretary and Commissioner of Internal Revenue and Chief Counsel be appointed from Civil Service.

Mr. Sutherland spoke in opposition to this. He declared that it was wrong to put a Commissioner of Internal Revenue in charge of 60,000 people to collect $80,000,000 and not give him the right to select the assistants in his office to help him on policy matters.

The House voted against this resolution also.

Mr. Seasongood's third resolution favored S. 2411, which is entitled a "Bill to prohibit officers and employees of the Bureau of Internal Revenue from engaging in other business, vocation or employment".

Mr. Sutherland said he was against this also. He cited a case where a valuable assistant commissioner was a partner in a small contracting business. The man would not stay with the Government if he did not have the additional income from the business, he said; he thought we ought to trust those in Government jobs and hold them responsible for their wrongdoings.

Mr. Fisher said that the phrase "engaging in other business" was indefinite, and that he thought the provision might work hardship.

John H. Yauch, of New Jersey, offered an amendment which was voted down.

This resolution was also lost when the House voted upon it.

Mr. Seasongood's fourth resolution was adopted without debate:

> Senate Bill 2412, 82d Congress, 2d session, entitled, "A bill to require that collectors of internal revenue be appointed in accordance with the civil service laws" is inadvisable legislation and should be opposed.

President's Reorganization Plan Is Discussed at Length

Mr. Seasongood's fifth and last resolution authorized his Committee and the Tax Section to study the President's Reorganization Plan No. 1, providing for reorganization of the Bureau of Internal Revenue.

Mr. Fisher moved that the Tax Section's Resolution No. 2 be substituted for this. It covered the same subject matter, he said, but in addition offered specific provisos with respect to trial by jury.

Mr. Seasongood said that he was agreeable, but that the Tax Section's resolution was in opposition to the action just taken by the House.

Mr. Kilpatrick, of the Tax Section, said that Mr. Seasongood was correct

—that the reorganization plan was a good one if one believed that tax collectors should be under civil service.

Mr. Sutherland said that the plan had many merits, but that it also involved radical changes in the organization of the Bureau and that it would not have been submitted to the Congress except for the hysteria following the recent tax scandals. He said that it had not had adequate consideration and that there was no reason for haste.

Mr. Fisher said that there was widespread public distrust of the Bureau and a great loss of morale among its employees. He pointed out that it had been proposed by the President, approved by the House and would become law March 15 unless the Senate acted against it. He said that the President had thought it effective and efficient and that the Section had approved it. He thought that if the Association did not take a stand on the matter, the public would be without the advice that they should have from the American Bar Association.

The House then voted against Mr. Fisher's substitute resolution. The Chair ruled that this also carried disapproval of the Civil Service Committee's original resolution, which was to approve the Reorganization Plan.

Mr. Fisher then proposed the following resolution, which was adopted without debate:

WHEREAS, The Excess Profits Tax Act of 1950 was drafted under unusually short limitations as to time, with the result that it was impossible to give adequate consideration to inequitable consequences of such Act in many cases, and

WHEREAS, experience under such Act has demonstrated that widespread inequity in the operation of the Act exists,

NOW THEREFORE, BE IT RESOLVED, That the American Bar Association recommends that the appropriate committees of the Congress be urged to institute an immediate study of the operation of the Excess Profits Tax Act of 1950 with a view to formulating amendments to alleviate the inequities that exist under its present provisions.

Mr. Sutherland then offered the following resolution from the floor:

BE IT RESOLVED, that the American Bar Association recommends to the Congress that before approving any plan of reorganization of the Bureau of Internal Revenue, it make certain that prior to such plan becoming effective, it is clearly provided by appropriate statute that the present right of the taxpayer to a jury trial in a tax case against the Collector of Internal Revenue is continued in equal force and effect against any official who might succeed to the collection functions of the present Collector of Internal Revenue; and that Sections 1346 (a) (1) and 2402 of the Judicial Code (Title 28, USC) be amended to the following form or its equivalent in purpose and effect:

Sec. 1346. United States as defendant.

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority of any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws, *and in any such action if either party shall demand, the action shall be tried to a jury*; . . .

Sec. 2404. Any action against the United States under Section 1346 of this title, *except as provided in Sec. 1346* (a) (1) shall be tried by the court without a jury.

He said that there had been no disagreement in the House on the necessity of preserving the right of jury trial, whatever reorganization plan went into effect and that his resolution was offered to make the stand of the House plain on that.

The resolution was adopted without debate.

Dean Albert J. Harno, of Illinois, reporting for the Survey of the Legal Profession in the absence of the Chairman, Judge Orie L. Phillips, reported that the Survey was now nearly finished and that a total of 132 reports had been prepared. He reported that the Survey was meeting with general acceptance because of the integrity and competence of the report writers.

Harrison Tweed, of New York, reported briefly for the American Law Institute, of which he is President.

The House recessed at 9:40 P.M.

FOURTH SESSION

■ This session was devoted to debate on the reports of the Committee on Peace and Law Through United Nations, the Section of International Law and the Section of Criminal Law, and to consideration of a proposal to create a new Section of Antitrust Law. The House went on record in favor of a constitutional amendment restricting the treaty clause of the Federal Constitution, voted to take no action at this time on the draft statute for an international criminal court, and set up a new Section of Antitrust Law.

■ The House reconvened at 10:00 A.M., February 26, with Chairman Roy E. Willy, of South Dakota, presiding.

The first order of business was the joint report of the Committee on Peace and Law Through United Nations and the Section of International and Comparative Law. Speaking for the two bodies, Edgar Turlington, of the District of Columbia, moved the adoption of the following resolution:

RESOLVED: That the American Bar Association is of the opinion that the participation of the United States in international measures for the promotion of human rights and fundamental freedoms should be provided for within a framework similar to that of the International Labor Organization.

Mr. Turlington said the Committee and the Section were in agreement on this resolution. He explained that the International Labor Organization is a body in which the United States has participated as a member for some eighteen years. It holds a general conference from time to time, and the conference produces recommendations and sometimes drafts agreements. Governments are not bound by the measures adopted by the Conference, there is no general guarantee and the fed-

eral-state relationship produces no difficulties.

The House adopted the resolution without debate.

Peace and Law Committee Presents Three Resolutions

Alfred J. Schweppe, of Washington, Chairman of the Committee on Peace and Law Through United Nations, then presented the report of his Committee. He first proposed following resolution:

> RESOLVED, That the American Bar Association recommends to the Congress of the United States for consideration an amendment to the Constitution of the United States in respect of the treaty-making power, reading as follows:
>
> "A provision of a treaty which conflicts with any provision of this Constitution shall not be of any force or effect. A treaty shall become effective as internal law in the United States only through legislation by Congress which it could enact under its delegated powers in the absence of such treaty."

Mr. Schweppe said that the proposed constitutional amendment would accomplish three things: (1) It would limit the treaty-making power so as to prevent a treaty from overriding other parts of the Constitution; (2) It would prevent a treaty from becoming self-executing merely by virtue of approval by the President and two-thirds of the Senators present; and (3) It would prevent Congress from ratifying a treaty that extends federal power into fields about which Congress has no power to legislate except by means of a treaty. Mr. Schweppe said that when the treaty clause was written into the Constitution, the concept of what subject matter a treaty could embrace was well settled. The contracting parties were nations, and they were the only bodies affected. In recent years, he continued, a theory has grown up that international law must be developed to the point where it affects not only governments but individuals as well. Under this theory our Government could take any domestic matter, make a treaty about it, and then impose its will on the states as the supreme law of the land.

Frank E. Holman, of Washington, speaking in favor of the resolution, declared that the proposed amendment was necessary to protect the rights of American citizens against the dangers of treaty law. He said that the chief opposition to the proposal was on the ground that it was unnecessary. He pointed out that the Committee and Section have been studying the matter for two years and that another delay would accomplish nothing. Mr. Holman declared that the press and the public were looking to the Association for leadership and that if the resolution were not adopted, the Association would lose that leadership.

Lyman M. Tondel, Jr., of New York, Chairman of the Section of International and Comparative Law, speaking against the resolution, said that the danger in the treaty-making power was not a run-away Senate, but a run-away President, making executive agreements. Nothing in the proposed amendment would affect executive agreements, he said. The Supreme Court has repeatedly held that the "treaty-making power must be supervised in subordination to the applicable powers of the Congress" and the Senate has always scrupulously respected the Constitution in passing on treaties. The phrase "internal law" in the proposal would seriously handicap the United States in making treaties with other nations. He declared that many of our present treaties dealing with extradition, consular rights, and reciprocal inheritance rights, among others, would be invalid under the amendment. The proposal would seriously handicap the United States in its role as a leader in world affairs, Mr. Tondel said, and he thought that there was no danger that the Senate would "run away" with the present treaty power. He urged the House to delay action until more time had been spent in study of the proposal, proposing a substitute resolution that would have directed the Section and Committee to continue to study the matter and report back to the House.

John C. Satterfield, of Mississippi, speaking for the Committee's resolution and against the Section's resolution to postpone action, declared that there was a danger that the Constitution might be slowly killed by use of the treaty-making power. This is a matter which we must and should present at this time, he declared.

Ross L. Malone, Jr., of New Mexico, declared that the proposed amendment was not a new question and would mean a fundamental change in our organic law. We should not handicap the operation of the national Government merely because we feel that the United Nations is going too far and too fast, he declared. The matter deserves further consideration before we "completely divest the Federal Government of the power which it has had for 165 years to negotiate treaties with other countries".

W. E. Stanley, of Kansas, declared that the Association owed it to the people to say immediately that we are in favor of protection of the Constitution and the rights of the states and American citizens.

Frank W. Grinnell, of Massachusetts, declared that the powers of the Federal Government were being extended and abused and that that power should be restricted.

Cody Fowler, of Florida, said that the Section and the State Department had not urged delay when the Charter of the United Nations was under consideration. "When there is any question about a threat to our rights, why should we delay and put off further discussion of this vital matter to the next meeting?" he asked.

Mr. Turlington said that the framers of the Constitution had carefully considered the subject and rejected the idea contained in the proposed amendment, realizing that such a practice would not be appropriate in a federal union where the control of international affairs is vested in the national Government, while large spheres of legislation are reserved to the states. The Association should not jeopardize its prestige by hasty action, he declared.

Thomas M. Burgess, of Colorado, said that he could see nothing wrong with saying, as the proposed amendment does, that there shall be no treaty that conflicts with the Constitution. The matter had been fully studied by the Committee, he declared, and there was no reason for further delay.

Mr. Schweppe, closing the argument for his resolution, said that the question of whether the treaty power is subject to constitutional limitations has never been squarely decided by the Supreme Court. He said that his Committee had studied the subject of executive agreements and believed that it was so important that it deserved separate and special study. The proposed amendment would preserve the constitutional balance between the states and the Federal Government, he declared, and that balance was the original intention of the founders, which has been shifted considerably by the Supreme Court. The United States is one of the few countries in the world where a treaty becomes self-executing without implementing legislation, he pointed out. He argued that there was nothing to be gained by further study.

Mr. Tondel, summing up for his side, said that he did not believe in expanded federal power—his position was that the normal treaty-making power should not be cut off, especially at a time when the United States has been catapulted to a position of world leadership.

The House then voted to adopt the resolution of the Committee on Peace and Law and not to delay action as proposed by the Section of International and Comparative Law.

Debate Begins on International Criminal Court

Mr. Schweppe then presented the second resolution of his Committee, which was as follows:

> RESOLVED: That the American Bar Association take no action at this time with reference to the establishment of an International Criminal Court.

Mr. Schweppe reminded the House that the draft statute of a proposed international criminal court had been referred to his Committee at the New York Meeting. He said that the Committee had studied the statute and were of the opinion that no action should be taken on it at this time. There are important constitutional objections to our joining in a program for a world criminal court, he said. The present draft is a "very preliminary" report, and the feeling is that, until a number of further steps are taken, the subject is not ripe for consideration.

Mr. Tondel said that the Section of International and Comparative Law had a substitute resolution to offer. This resolution would have had the Association "recommend to the United States Government as a basis for action the draft statute. . . and that the American Bar Association give its support to the adoption of such a statute and the establishment of the International Criminal Court for which it provides". At Mr. Tondel's request, Judge John J. Parker, of North Carolina, Chief Judge of the United States Court of Appeals for the Fourth Circuit, one of the alternate judges at the International Court at Nuremberg, was granted unanimous consent to address the House on the subject.

Judge Parker said that the draft statute does three things: (1) It sets up the personnel of the court; (2) It prescribes an indicting authority; (3) It sets up the procedure by which such a court is to function. The draft statute does not attempt to define crimes of an international character, he said, and it does not profess to create individual liability on the part of nationals of any country, but expressly provides that the nationals of no country shall be subjected to the jurisdiction of the Court until that jurisdiction has been accepted by the countries of which they are citizens. All that the draft statute would do is to set up judicial machinery which may be implemented by subsequent treaties. He declared that its machinery meets the highest standards of American jurisprudence.

At the request of Mr. Schweppe, Dr. George A. Finch, of the District of Columbia, a member of the Peace and Law Committee, was granted unanimous consent to address the House.

Dr. Finch said that the subject was complicated by the question of the treaty-making power and by confusion on the part of the proponents of approval of the draft statute of the war powers of the President and his powers under the Constitution. The Nuremberg and Tokyo trials are no precedent at all for the proposed court, he declared, for they were international military tribunals to try enemies in our custody—not international courts with power to take American citizens abroad to be tried for crimes committed in this country in time of peace. Under the Constitution, he said, crimes committed in violation of treaties of the United States must be tried under the judicial power of the United States, so that the constitutionality of the proposal is dubious. The draft statute omits many important rights contained in the Constitution, he said.

Section of Criminal Law Proposes Alternative

Arthur J. Freund, of Missouri, Chairman of the Section of Criminal Law, said that his Section was in substantial agreement with the International Law Section on the matter, but considered that the recommendations should be properly and definitely implemented. He offered an amendment to the substitute resolution proposed by the International Law Section which would have established a committee of the Association representing the International Law Section, the Criminal Law Section and the Committee on Peace and Law, to confer with representatives of the State Department on means of improving the draft statute.

George Maurice Morris, of the District of Columbia, Chairman of the United Nations Committee which had drafted the draft statute,

said that he thought that the most important thing was to obtain widespread discussion and study of the matter. For that reason, he thought that, whatever happened to the International Law Section's resolution, the idea of the Criminal Law Section should be endorsed.

Questions by Edward L. Wright, of Arkansas, and Charles H. Woods, of Arizona, were answered by Mr. Morris.

Tracy E. Griffin, of Washington, said that he was opposed to the draft statute. He pointed out that the United States would be outnumbered on the court and that under its jurisdiction the President of the United States, for example, might be tried as an aggressor in Korea.

The House then voted to adopt the resolution of the Peace and Law Committee and against that of the International Law Section as amended.

Mr. Schweppe then presented the last resolution of his Committee, which was as follows:

> RESOLVED, That if the General Assembly of the United Nations determines that the Convention on International Transmission of News and Right of Correction (commonly known as the News Gathering Convention) shall be opened for signature, the American Bar Association opposes the signature and ratification of the Convention by the United States of America.

Mr. Schweppe said that the proposed news gathering convention contained so many restrictions on freedom of information that it ought not to have the sanction of international law. He said that the State Department and the newspaper profession, both of which had originally been in favor of the idea, were now opposed to the convention.

Mr. Tondel, for the Section of International and Comparative Law, said that his Section had originally favored the convention but was withdrawing its recommendation in view of the opposition by the press.

The House then voted to adopt the resolution offered by the Peace and Law Committee.

Members Debate Question of Creating Antitrust Section

The members then turned their attention to the proposed creation of a new Section of Antitrust Law in the Association. Secretary Stecher, speaking for the Board of Governors, moved that such a Section be created.

Albert E. Jenner, Jr., of Illinois, speaking in favor of the proposal, said that it had been originated about a year and a half ago by a group of members of the Association interested in the subject principally because of extended requests by state and local bar associations for assistance in the general field from the American Bar Association. A poll of members (not complete) showed that some 350 were interested in joining such a Section.

At the request of Whitney North Seymour, John T. Cahill, of New York, was given unanimous consent to address the House in favor of the proposal. Mr. Cahill pointed out the importance of antitrust laws in our national economy and the magnitude of the problems involved in that field. He denied that such a Section would be under the control of representatives of business, saying that he thought that the members of the Association could be trusted in their spirit of fairness to see to it that both sides were represented, just as in other Sections of the Association. Antitrust laws have grown to such size that the only way those problems can be effectively administered in the Association is through the medium of a separate section, he declared.

Sylvester C. Smith, Jr., of New Jersey, speaking against the proposal, said that the creation of an Antitrust Section would be bad from a public relations point of view. He declared that a multiplicity of sections might, in the long run, destroy the effectiveness of the Association, which should be developing the science of law as a whole.

Walter Chandler, of Tennessee, said that antitrust law was an essential part of business law as a whole and that antitrust matters should remain under the Section of Corporation, Banking and Business Law. Members of an antitrust section would be, in the main, lawyers interested in weakening enforcement of antitrust laws, he declared, and the Association would become a spokesman for a highly specialized group.

Ralph G. Boyd, of Massachusetts, Section Delegate of the Section of Corporation, Banking and Business Law, speaking for that body, said that the view of his Section was that it was a question of Association organization and that his Section did not feel it should attempt to influence the House.

Harold J. Gallagher, of New York, said that he was opposed to the creation of a specialized section necessarily composed of lawyers who have a special interest and whose interest must in their daily practice be confined to the defense of antitrust cases.

Judge Walter M. Bastian, of the District of Columbia, said there were other specialized Sections in the Association. He called attention to the fact that the New York State Bar Association has an antitrust law section of 600 members. He said that the present Commerce Committee was too small to handle antitrust policy and that the Antitrust Division of the Corporation Section had not met for two years.

E. Smythe Gambrell, of Georgia, said that he did not think that the Corporation Section had had an opportunity to provide the forum for discussions and the opportunities for development of sound thinking in the antitrust field, and that that field should be given the treatment to which its importance entitled it.

The House voted in favor of the new Section, 103 to 27, more than the necessary two-thirds majority required for creating a new Section.

On motion of Secretary Stecher, the House then voted to approve the By-Laws of the new Section as amended and approved by the Board of Governors and recessed at 1:00 P.M.

FIFTH SESSION

■ At this last session, the House heard the reports of the Committee on Traffic Court Program, the Committee on Membership, the Committee on Commerce, the Section of Labor Relations Law, the Section of Public Utility Law, the Committee on Regional Meetings, the Committee on Legal Service to the Armed Forces and the Committee on Draft. Most of the debate at this session was upon resolutions calling for amendments to the antitrust laws to make them applicable to labor unions in certain types of cases.

■ The House convened at 2:00 P.M. Tuesday, February 26, for its last session of the Mid-Year Meeting. Chairman Roy E. Willy presided.

Roy A. Bronson, of California, speaking for the Committee on Traffic Court Program, moved that the following recommendations be adopted *seriatim:*

1. That the Committee To Supervise the Traffic Court program be continued from year to year for four years.
2. That as rapidly as possible, the work now being carried on by the Traffic Court Program of the Association be turned over to the state or local bar associations.
3. That the Traffic Court Program include such surveys on behalf of municipalities and states as are approved in all respects by the Administration Committee.

Mr. Bronson said that the reason for the second resolution was the belief that the traffic court work could be undertaken at the local level. His Committee has been doing a pilot job, he explained, and as soon as its program is completed the work can well be carried on by the state and local associations. He explained that the third recommendation would enlarge the work that the Committee has undertaken so far. His Committee has had a great number of requests from different municipalities to make surveys of their traffic courts, and this would be an opportunity to translate into action the educational work which the Committee has been carrying on.

The House voted to approve the recommendations.

James R. Morford, of Delaware, Chairman of the Committee on Membership, reported for that Committee. He said that increased membership was the solution to the Association's financial problems and reported a net gain of 3,749 members for the period ending January 31, 1952. He said that the number of losses due to nonpayment of dues had decreased during the year, and he urged members of the House to continue their co-operation with the Committee in curtailing such losses. He said that Regional Meetings were an excellent vehicle for obtaining new members. The Committee's goal is still 50,000 members by September, he declared.

Chairman Willy then announced the nominations for officers and members of the Board of Governors made by the State Delegates. These are listed on pages 376 and 377 of this issue of the JOURNAL.

The Secretary reported adverse action by the Committee on Scope and Correlation of work upon a suggestion that the Special Committee on Traffic Court Program be made a Standing Committee. No action by the House was called for.

Edward R. Johnston, of Illinois, Chairman of the Committee on Commerce had three resolutions to offer on behalf of his Committee. The first was as follows:

> RESOLVED, That the report submitted by the Standing Committee on Commerce on Senate Bill 2522 be approved and that the Committee be authorized to transmit said report to the Chairman of the United States Senate Committee on the Judiciary.

Mr. Johnston explained that the proposed amendment to the Sherman Act would affect businessmen in states that have a fair trade act. Anyone dealing in fair-trade products would be required to observe the terms of the act whether they signed a fair-trade agreement or not and it allows suits for damages against those who do not observe fair trade agreements. The Committee felt that this was not in the public interest, Mr. Johnston said, in that it went much too far.

The House voted to adopt the Committee's resolution.

Mr. Johnston's second resolution dealt with a bill prepared by Theodore Iserman, of New York, purporting to subject labor unions to the antitrust laws by amendment of the Labor-Management Relations Act. The Committee had decided, by divided vote, to ask for referral to the Labor Relations Law Section, but Mr. Johnston said that he had since discovered that the Labor Section had already considered the matter and that he preferred to let the Labor Section make its own report to the House.

Mr. Johnston's third resolution was as follows:

> RESOLVED, That the American Bar Association approve the amendment to Section 1 of the Sherman Act proposed by the Standing Committee on Commerce and the Section of Corporation, Banking and Business Law designed to protect trade and commerce against restraints of commercial competition by labor organizations.

Mr. Johnston said that his resolution would approve a limited amendment to the Sherman Act, one that would subject labor unions to penalties under Section 1 where they are guilty of restraint of commercial competition. The effect would be to return the law to its status before the Supreme Court's decision of the *Hutcheson* case in 1941, he explained. At present there is nothing in the antitrust laws to cover labor except prohibition of horizontal restraints of trade between employers and employees.

Barnabas F. Sears, of Illinois, said that the Section of Labor Relations Law had given the matter serious consideration and had decided to approve the resolution in principle, but that they deemed that a more specific approach to the problem was desirable. He offered, as a substitute, the draft of a bill approved by a majority of the Council of the Labor Section, the effect of which he summarized as follows: (1) Outlaw the sit-down strike; (2) Prohibit union restrictions on the number of persons who may engage in a trade or calling; (3) Outlaw union attempts to control or fix

prices, divide markets, control production and the number of employers who may engage in business; (4) Prohibit featherbedding; (5) Outlaw industrywide bargaining. If the House believes that those are evils, he said, it should say so by adopting his resolution rather than one that merely says it shall be unlawful for a labor organization to restrain commercial competition.

Clif. Langsdale, of Missouri, of the Labor Relations Law Section, said that he doubted whether any employer who read the substitute offered by Mr. Sears would be in favor of it. The substitute would prohibit contracts between a labor union and more than one employer at the same time, for example, he said, and this would make it impossible for employers to do business in some cases. The substitute was not a Labor Section proposal, he declared. The Section's Council has ten members, five representing management lawyers and five representing union lawyers. When the resolution was passed by the Council, one union member was absent, Mr. Langsdale said.

The House then voted to reject the substitute amendment offered by Mr. Sears.

Mr. Langsdale, speaking against the resolution offered by the Committee on Commerce, said that the Sherman Act was never intended to be applied to labor unions. The resolution is an effort to return to government by injunction, he said, and would put labor back in the position it was in the *Danbury Hatters'* case.

The House then voted to adopt the resolution of the Committee on Commerce.

Mr. Johnston then offered a resolution for the Joint Committee of the Commerce Committee, the Division of Antitrust Law of the Section of Corporation, Banking and Business Law and the Labor Relations Law Section, of which Joint Committee he is also Chairman. The resolution was uncontroversial and approved certain proposed amendments to the Labor-Management Relations Act which had the general effect of liberalizing and broadening its emergency provisions and giving the President a little greater facility in applying for an injunction where the national health or welfare is imperiled. The resolution, which was approved by the House, was as follows:

> RESOLVED, That the amendments to Sections 206, 208 (a), (b), (c) and (d), 209 (a) and (b), and 210 of the Labor-Management Relations Act of 1947, as proposed by the Joint Subcommittee of the Sections of Corporation, Banking and Business Law and Labor Relations Law, and the Committee on Commerce, be approved by the American Bar Association.

Mr. Sears, speaking for the Labor Relations Law Section, then offered the following:

> RESOLVED, That the American Bar Association is opposed to government agencies requiring or recommending that employees join or not join unions as a condition of employment.

Mr. Sears recalled that during World War II, the War Labor Board issued directives to the effect that parties should incorporate into collective bargaining agreements the maintenance-of-membership principle—*i.e.*, that once an employee joined a union, he should continue his membership in that union as a condition of employment. Once those clauses were incorporated, they never came out of the employment contracts, he said, and the issue is made timely by the union shop issue involved in the current steel negotiations. The trouble is that, with the Government on the union's side in such a case, the employer is seldom in a position to resist the union shop contract. This is an obvious violation of congressional intent in the Labor-Management Relations Act.

Mr. Langsdale said that union members of the Labor Section Council approved the resolution, contending that it should include congressional limitations as well as other limitations and might succeed in taking the limitation off the closed shop.

The resolution was duly adopted.

Ivan Bowen, of Minnesota, reporting for the Section of Public Utility Law, as its delegate, offered the following resolution:

> BE IT RESOLVED, That the American Bar Association favors the amendment of Section 1 of the Natural Gas Act (15 U. S. C. 717a) to exempt therefrom a person engaged in local distribution of natural gas or any facilities used to transport natural gas within a particular state, whether or not in interstate commerce.

Mr. Bowen said that the resolution would restore to the states jurisdiction for fixing rates and regulations of gas and distributing companies coming into the state in interstate commerce, but solely as to the distributing systems that are located wholly within one state.

Mr. Stecher, in reply to a question of Mr. Woods, of Arizona, said that the Board of Governors had not approved this, apparently feeling that it was beyond the scope and objectives of the Association and entered the field of economic questions.

Anne X. Alpern, of Pennsylvania, said that she thought that the proposal was beyond the province of the Association and it might do a great deal of harm to approve a program that would inevitably cause a rise in natural gas rates.

On motion of Charles S. Rhyne, of the District of Columbia, the House tabled the resolution as not within the purposes of the Association.

E. Smythe Gambrell, of Georgia, reported for the Committee on Regional Meetings. He summarized the two meetings held last year and the plans for the Louisville and Yellowstone meetings in April and June of this year.

Milton J. Blake, of Colorado, Chairman of the Committee on Legal Service to the Armed Forces, reported briefly on the progress of work on the Compendium project.

Secretary Stecher announced that the Bill of Rights Committee recommended that a resolution endorsing an Equal Rights Amendment offered at the 1951 Annual Meeting by Ethel Ernest Murrell be not approved, and on his motion the

House voted to adopt the Committee's recommendation.

Mr. Rhyne, on behalf of Herbert G. Nilles, offered the following resolution for the Committee on Lawyer Census, which was adopted without debate:

RESOLVED, That the House of Delegates approve a complete and regular registration of all lawyers in each state and the District of Columbia, through the Integrated Bar or the state judiciary, with enabling legislation whereever necessary, and enforced by such effective sanctions as may be worked out in each state, to the end that all lawyers authorized to practice will be known.

Mr. Rhyne then gave the report of the Committee on Draft. He moved that the question of Senate Bill 1570, to grant immunity from prosecution for witnesses testifying before congressional committees be referred to the Committee on Jurisprudence and Law Reform, at the request of Austin F. Canfield, of the District of Columbia.

The motion was duly carried.

A resolution offered by Harold J. Gallagher, of New York, was adopted without debate:

RESOLVED, That the Committee on Platforms of Political Parties is authorized to submit to the two major political parties, for inclusion in their respective platforms, the following proposed plank:

A qualified and independent judiciary is indispensable to the maintenance of a coordinate branch of government under our Constitution and to the protection of the freedoms and the rights of every individual. We commend the policy of the Judiciary Committee of the United States Senate during the past six years, irrespective of party affiliation, of requesting and considering a report and recommendation by the Judiciary Committee of the American Bar Association on nominees submitted by the President for judicial positions. Such policy shall be continued. We pledge that only the best qualified persons available shall be selected for appointment to judicial office, and recommend that the good offices of the American Bar Association shall be availed of to accomplish that purpose.

Mr. Rhyne said that the second resolution, offered by Charles H. Woods, of Arizona, merely requested that a resolution on the so-called Dollar Steamship Line cases be referred to the Committee on Jurisprudence and Law Reform. His Committee approved that recommendation, he said.

Albert E. Jenner, Jr., of Illinois, the Chairman of the Jurisprudence and Law Reform Committee, said that the resolution referred to was very general, that the Committee did not know what it was supposed to do by way of investigation and that it now had seventeen major items on its agenda. He moved that a special committee be appointed to consider the resolution. Mr. Jenner's motion was lost by a vote of forty-two to thirty-six and the resolution was referred to the Committee as recommended by the Draft Committee.

Mr. Rhyne then moved adoption of the third resolution, offered by Robert F. Maguire, of Oregon, and approved by his Committee:

BE IT RESOLVED, That in order to permit the House of Delegates to be fully informed of the viewpoint of the Section of Judicial Administration of the American Bar Association on Rule 71 A(h), and Senate Bill 1958, 82d Congress, and of the viewpoint of the federal judiciary throughout the United States, now being gathered at the instance of the Judicial Conference of the United States by a committee of such Conference under the chairmanship of Chief Judge John J. Parker, the House of Delegates hereby directs the Section of Judicial Administration to continue its study of this important subject and report at the 1952 session of the American Bar Association in San Francisco.

The House adopted the resolution without debate. Mr. Rhyne then moved adoption of the following, which includes an amendment offered from the floor by Mr. Jenner and accepted by Mr. Rhyne:

WHEREAS, In order that the action of the House of Delegates in rejecting the resolution of the Tax Section, with reference to the President's Reorganization Plan Number One, of 1952, for the reorganization of the Bureau of Internal Revenue, may not be interpreted as disapproval in its entirety of the proposed plan, and may not be interpreted to indicate that the American Bar Association is not deeply concerned with the recent disclosures of fraud on the part of some persons in the services of the Government, engaged in the assessment and collection of taxes; and

WHEREAS, The American Bar Association is deeply concerned with the fraud disclosed, and deplores the bad faith on the part of a number of government employees including among them members of the Bar among the many honest and faithful persons in the service; and

WHEREAS, Notwithstanding the fact that it is believed that the fraud disclosed was not due primarily to organization, but to personnel, and might have existed under any type of organization, the American Bar Association feels that Congress and the Executive should continue to give attention to working out a plan of reorganization of the Bureau which will make it more efficient in the handling of its great task; and

WHEREAS, The American Bar Association wishes to render any assistance which it may be able to render when the problems are fully and openly discussed, as would not be possible within the limited time within which the President's Reorganization Plan must be acted upon; now therefore be it

RESOLVED, That the American Bar Association recommends to the Congress that it reject the President's Reorganization Plan Number One of 1952, and immediately arrange for hearings before the Congressional Joint Committee on Internal Revenue Taxation on the proposal set forth in the President's Reorganization Plan Number One of 1952, and other proposals that are pending before Congress, including a proposal to separate the Bureau of Internal Revenue from the Treasury Department, with a view, as promptly as possible, to adopting appropriate legislation; and be it further

RESOLVED, That the American Bar Association directs the Section of Taxation to render all possible assistance to the Congress and to the Executive in solving the problems involved.

Allan H. W. Higgins, of Boston, said that he could not actively support the resolution, which was contrary to the wishes of the Taxation Section. However, he said, the Section feels very strongly that the House did owe an obligation to the public and to Congress to explain why they were opposed to the Reorganization Plan, and that as an individual he hoped the House would correct the misconception generated by the vote on the Plan at the Third Session. The House then voted to adopt the resolution.

The House adjourned at 3:40 P.M.

A Reply to Professor Kinnane

(Continued from page 368)

their own independent of or inconsistent with the public interest. So, we have to use devices to curb faults in greater or less degree common to all of us.

No one would claim that separation of powers is an absolute safeguard; nor is a constitution. If the people become careless and do not understand that the fundamental problem in all free governments is that of keeping control of the government and each part of it, the demise of liberty is not difficult to predict. It is significant that the decline and fall of constitutional government has invariably been accompanied by the aggregation of powers in a single department. In Rome it was the Emperor; in Germany, the Chancellor; in Great Britain, the House of Commons. There the Queen and Lords have been reduced to dignified impotence and the courts never had any lawful control of governmental authority.

The popular concept of constitutional government is that of everlasting permanence. But experience does not bear that out. The century and a half following the American Revolution may be called the Age of Republics, not because that form of government was universal, for it was not, but because it prevailed to a greater extent than ever before or since. Some thirty republics were formed with constitutions modeled on our own, and, following World War I, ten more appeared in Europe, under the theory of "self-determination" for small nations. But, even during that period, some South American republics degenerated into military dictatorships, and, between the two World Wars, Bolshevism, Fascism, Nazism and Falangism were accepted into the Society of Nations. The republics in Germany, Austria and Spain disappeared and, in the aftermath of World War II, Poland, Czechoslovakia, Lithuania, Estonia, Latvia and Yugoslavia were swept away. The two outstanding free governments of all history, Great Britain and the United States, show dangerous signs of contagion; and an unprejudiced survey of the whole world moves us to ask: Have we entered upon a new Age of Autocracy?

In keeping control of government, we have to act upon our best judgment and whatever light we have from the experiences of the past. To break down the principle of separation is to make a useless, capricious experiment, with everything to lose and nothing to gain. It is much the same as Russian roulette; you have five chances to one that you will survive, but if you do, you are no better off than before; you merely remain alive. Of one thing we can be quite sure; it is much easier to keep what liberty we have than to regain it after it has been lost.

Law Student Association

(Continued from page 372)

most valuable part of the meetings has been the participation by the students in panel discussions on topics they themselves select. Examination was made of the value and extent of student bar activities, the use of orientation courses for freshmen students, advisability of study clubs, law school newspapers, and topics for law reviews. Consideration was given to limitations of the casebook system, the need for practice as well as theory in legal education, moot court work, legal aid programs in law schools, and nationally administered bar examinations. Finally, study was made of placement problems and opportunities, the role of the lawyer in community life, organized legal reform, the advancement of professional ethics and continuing legal education after admission to the Bar. Here are many topics about which the practicing members of the profession have been writing and talking; the embryonic lawyers, too, have shown a vital interest in them.

These regional conferences are climaxed each September by an annual national meeting of the House of Delegates and the Board of Governors.[12] In 1950 the meeting was in Washington, D.C., where 139 delegates from fifty-eight of the country's law schools gathered; in 1951 New York City was the focal point for 132 delegates from fifty-six member schools and two nonmember schools. Such gatherings have permitted the synthesis of the work of the regional conferences into a unified view. They have established close contacts across the country for individual student bar associations and individual students. And, since in each instance the American Bar

12. The proceedings at each annual meeting are summarized and published. Those for the First Annual Meeting at St. Louis, Missouri, in September, 1949, were prepared in mimeographed form and given limited distribution. Since then the summaries have appeared in printed booklet form, these covering the Second Annual Meeting at Washington, D.C., in September, 1950, and the Third Annual Meeting during September, 1951, in New York City. The Fourth Annual Meeting is scheduled for San Francisco, California, during September 12-15, 1952; shortly thereafter copies of the handbook and summary will be distributed to ALSA-affiliated student bar associations for their use during the ensuing year.

Association has met at the same time and place, an opportunity has been afforded law students to talk with and observe the work of members of the organized Bar.

The value of the regional and national meetings perhaps is best illustrated by the ideas which have emanated from them. These have been numerous, but the most expressive of all have touched upon a field which the practicing lawyers and their bar associations largely have neglected—the standards and standing of the legal profession. The basic thought was very clearly expressed by a student at one of the circuit conferences [13] who said, "The thing for us to remember is just how serious the situation is. The profession's public relations are horrible. Today the lawyer is just another man in the street and, to many, he is becoming a sort of machine. He is losing his place in the sun, a condition he has brought upon himself. This hurts you as a future member of the profession. But you can do something about it. It's to your own selfish interest to pitch in and clean house."

This thought had cropped up among law students all over the country, so it was not unusual to find the second annual meeting[14] advocating that local bar associations "present to students the goals and aims of the profession as well as a pattern of integrity and respect which will enable the graduate to more adequately prepare for his chosen profession". Later there was added the suggestion that a required course in legal ethics be taught in all law schools, the minimum material to be the Canons of Professional Ethics and illustrative cases.[15] And finally a committee was established in the American Law Student Association and is now working on a study of the problems of better serving legal needs, of the means for promoting a greater sense of responsibility in public officers and how best to acquaint the public with the aims and ideals of the Bar so that the confidence of the public in the lawyer will be restored.[16]

Association Offers Medium for Discussion of Placement Problems

Placement in the profession always has been a problem but perhaps increasingly so during recent years. Everywhere law students gather the topic arises. But it took the creation of the American Law Student Association to furnish a medium for national expression of the problems and the working out of solutions. Studies by the students[17] so far show that the co-ordination of existing placement services of the law schools and of the local and state bar associations will help greatly. This will have the effect of expanding the facilities of each service and thus aid the newly admitted lawyer. An attempt to achieve this co-ordination will be supplemented by a survey of opportunities existing in legal and collateral fields and also by national distribution of all information obtainable on the subject.

In the past, the ALSA *Newsletter* was used for the purpose of disseminating news. This was a mimeographed three-page monthly publication which contained the latest information about student bar activities and topics of current interest. Much space was devoted to placement information. This included a discussion of summer interneship programs operated by several states, the existence of surveys of law practice in various states, the monumental "Statistical Report on the Lawyers of the United States" prepared by the Survey of the Legal Profession and opportunities for lawyers in the Armed Forces. But attention also was given to special law courses and scholarships, national moot court competition, the Canons of Professional Ethics, and the use of such pamphlets as "How To Study Law and Write Law Examinations" and "Rules for Admission to the Bar".

The mimeographed publication has been replaced by *The Student Lawyer*, a printed newspaper which brings the message of the American Law Student Association direct to the individual law student and helps the student Bar create student interest. In addition, a weekly bulletin service is in operation. Every approved law school, both those with and without student associations belonging to the American Law Student Association, is sent bulletins on subjects of general interest to all students. Each bulletin is designed to be posted on the principal bulletin board of the school for one week and then replaced by one on a new topic. Sample topics are "The Student Loan Plan" and "Utilization of Lawyers in the Armed Forces".

This service is supplemented by a system of special reports, distributed to all law schools, which are prepared to help the student bar associations with their problems and to promote worthwhile activities. One type of report is designed to cover a particular activity of a student bar association which might suggest improvements in a similar activity already being conducted at other schools or which might suggest the establishment of a comparable project. One such report, prepared by a student at the school, discussed the establishment and operation of a law school newspaper at the University of Michigan.

Survey reports are another type. These are based upon surveys made of the bar associations at the various law schools to ascertain what is being done on the subject of the report. In much the same manner as some studies for the Survey of the Legal Profession, the results are analyzed and recommendations or criticisms are made. Speakers' programs, book exchange services, and honor systems are typical topics.

The third type of report is that made from time to time by each of the sixteen ALSA committees. To

13. Tenth Circuit Conference, ALSA, held at the University of New Mexico in Albuquerque on April 13 and 14, 1951.

14. Summary of Proceedings, Second Annual Meeting, ALSA, September 17-19, 1950, Washington, D.C., page 13.

15. Summary of Proceedings, Third Annual Meeting, ALSA, September 15-18, 1951, New York City, pages 17 and 24.

16. *Ibid.*, page 25.

17. Report of the ALSA Placement Committee, contained in ALSA Summary of Proceedings, Third Annual Meeting (1951) at page 19.

this is added the last type which might be called general reports. These are made by members of the Bar, law students and legal educators on subjects of importance to all law students. Reports of this kind already released have discussed "Legal Ethics", "Placement", and "The U.S. Court of Military Appeals".

Since numerous articles of particular interest to law students constantly are published, the American Law Student Association keeps looking for the best of these. If the author and the publisher give their consent, these are reproduced in pamphlet form and distributed. One pamphlet, entitled "Comments on Chaos", was written by Dean Charles B. Nutting of the University of Pittsburgh School of Law and was published in the *University of Pittsburgh Law Review*.[18] It discussed the tendency in the legal profession to produce specialists, the resultant loss by the individual lawyer of his sense of responsibility for the general administration of justice, and the available remedies. Another pamphlet reproduced a *Journal of Legal Education*[19] article on "The Student Bar Association—Its Functions in Law School" prepared by Professor Edward D. Re of St. John's University School of Law. Other pamphlets distributed to law students included "Look Before You Leap" and "Getting Started", prepared by the American Bar Association to furnish initial guidance to those studying law and those considering establishing a law office and practice of their own.

To further aid student bar associations in individual schools, there also is published in booklet form a summary of the proceedings of each annual meeting.[20] Each booklet really is a handbook of the American Law Student Association. In addition to the summary of the proceedings for a particular meeting, it contains the Constitution and By-Laws of the organization; member associations are listed by name and location; national officers are identified as are circuit vice presidents, members of the Board of Governors, and members of the House of Delegates; committees of the Association are listed with the names of their respective chairmen; and the objectives of the organization are given. Like the other publications mentioned, the handbooks are distributed to all the approved law schools in the country.

Additional reading matter is furnished by making the AMERICAN BAR ASSOCIATION JOURNAL available to members of the American Law Student Association affiliated student bar associations at the special subscription rate of $1.50 per year. Other law students pay $3.00 for a yearly subscription, which is $2.00 less than the standard yearly rate.

Practicing Lawyers Assist Students Locally

Distribution of these materials is not enough. Aid and assistance cannot be effectively given without the personal touch. So the Junior Bar Conference Committee on Law Students furnishes practicing young lawyers in different areas of the country to advise and assist the law students with their problems. The Director of the Law Student Program of the American Bar Association corresponds with student bar leaders and visits the various law schools. Talks are given by the President of the American Bar Association and officers of the Junior Bar Conference before student groups. Similar visits are made by the national and circuit officers of the American Law Student Association and committees of that organization keep in touch with all the affiliated student bar groups. Sixteen active ALSA committees exist, concerning themselves with subjects of peculiar interest to law students (*e.g.*, moot court) as well as topics of importance to the entire legal profession (*e.g.*, legal ethics).

In the meantime individual student bar associations have been busy on a local level. At least one association has been producing weekly radio shows which stress the need of laymen to consult lawyers for preventive rather than remedial assistance.[21] Some have developed legal aid programs in their schools. Many have inaugurated placement programs. Others have established activities that direct attention to the importance of professional ethics. A few have developed excellent law school newspapers. Virtually all have instituted speakers' programs at which leading practitioners and educators present their views.

At this point one may wonder if this flood of activities will result in permanent good for the legal profession and for the individuals who participate in them. The answer must be in the affirmative for here is a national student bar association which is a training ground for the development of character and leadership so sorely needed by the legal profession and the general

18. 2 *Univ. Pgh. Law Rev.* 531 (1950).
19. 3 *Jour. Legal Educ.* 573 (1951).
20. See footnote 11.
21. The University of Oklahoma Student Bar Association broadcasts these weekly shows over Station WNAD in Norman, Oklahoma.

public. It initiates the student, at the very outset of his legal career, in the value and importance of group work and the obligations which are incurred in becoming part of his chosen profession. It leads him after graduation to similar participation in national, state and local bar association activities without which the legal profession would founder.

But what of the students? Do they agree with this view? Again the overwhelming answer is yes, if judgment is made by the rapid growth of the American Law Student Association. A total of forty-six student bar associations immediately affiliated with the Association when it was organized in September, 1949. In slightly more than two years the membership has swelled to ninety-four member groups. This means that over 75 per cent of the nation's approved law schools have member associations. And these member associations represent more than 30,000 individual law students to whom the benefits of membership are passed on. Even the largest national association of lawyers, the American Bar Association, has less than 25 per cent of eligible lawyers as members after years of existence.[22]

To catch the tenor of enthusiasm which pervades the law students engaged in this work, one need only read the Summary of Proceedings for any annual meeting. The one covering the September, 1951, meeting in New York City is a good example. Into twenty pages are packed the activities of three days of exchange of ideas, consideration of educational problems, concern over the falling status of the legal profession, speeches by Defense Mobilizer Wilson and Court of Military Appeals Judge Paul W. Brosman, and a tour of the New York University Law Center with its unusual facilities. Thoughtful interest and energy are at a high pitch.

The eminent American Medical Association has found the American Law Student Association a source of valuable ideas. It studied the organizational steps which brought this new Association into being and watched its subsequent swift development. Then the American Medical Association organized its own student association in the nation's medical schools along the same lines employed by the legal profession.[23] In so doing, it confirmed the faith and vision of those who brought the American Law Student Association into existence.

Organized Bar Must Increase Its Support

In spite of all that has been said here, however, it must be emphasized that the achievements possible through the American Law Student Association have hardly been revealed. The first two years have been primarily an organizational phase. This has severely limited many of the activities that will now spring forth as the embryonic lawyers discover the power in their organization.

But warning must be given that, unless nourishment and care is provided, the organization will wither away or else take some misshapen form. The nourishment and care so far have come from the organized Bar, which has thus assured a continuity of purpose and growth for the organization. Perhaps no other program the Bar has inaugurated is so important to the profession presently and in the future. It is to be hoped that the Bar will fully recognize this fact and, in the years ahead, not only will continue but also will increase its financial and physical support of the American Law Student Association. If the Bar does this, the legal profession and the public will be the permanent beneficiaries.

22. At the end of 1951, the American Bar Association had approximately 47,000 members. The Survey of the Legal Profession in 1949 reported 168,489 lawyers in the United States and the official 1952 count is 221,605 lawyers in the United States and territories.

23. The "Student American Medical Association" was organized December 29, 1950. Out of a total of seventy-nine approved medical schools, forty were charter members. See 145 *Jour. Am. Med. Assn.* 411 (1951).

New Light on Old Litigation

(Continued from page 388)

and atheistic Abolitionists who have dared in blasphemy to proclaim before their Country and the eternal God, that "The Constitution of the United States is a Compact with Hell!" O! moral Traitors of the deepest dye! and Fiends incarnate, who, under the inspiration of the Prince of Darkness, have desolated the Paradise of our Nationality by Fratricidal warfare! and, with crime equally damning, now employ all insidious means to prevent reconciliation! and thus traitorously "give aid and comfort to the enemy"; and thus, actually invite the Foreign Powers to turn the scale of victory for the Union against us; and thence secure the Independence of the Southern Confederacy!

That I am that Citizen who endured your attempted insult, as well as wrongs; and, also, malicious libellous persecution from your political friends, because of my bold Patriotism, is my pride; and my best claim to the continued respect and sympathy of my fellow-citizens.

With all due regard I remain,
Sir,
Your Excellency's
Most Obed't Serviteur,
The Count Joannes.

As no reply to this letter was immediately forthcoming, within the next few days the Count again called upon the Governor, this time leaving a card upon which was written "I respectfully desire the answer as to the subject matter of my last note. It is now a matter of honor." This also producing no appreciable result, the Count thereupon resorted to his favorite weapon, the libel suit, and such a suit was filed by him against the Governor on July 14, 1862, a summons being issued and served upon the Governor requiring him to answer to "George, The Count Joannes, public author, and lecturer, and a citizen of the United States of America and residing in the City of Boston in the County of Suffolk", in an action of tort, and attaching his goods and estate to the value of $4,000 for security to

satisfy any judgment which might be recovered. Across the back of this summons the Governor endorsed "Will Wm. Burt please see what this is about for me? J.A.A." Thereafter Mr. Burt[14] represented the Governor in his dealings with the Count, and the next communication, dated July 21, 1862, which, if it fell short of the Count's effusion in length equalled it in its vitriolic quality, emanated from him:

> Dear Sir,
>
> Some papers, relating to a matter of which I cannot, I confess, see the importance, and of which the sum total at stake seems to be at most, in currency, $1.93, have come to my hand from Col. Browne, in which you seem to urge upon Govn. Andrew the propriety of paying you the sum above named, being amount of witness fees paid, and travel, service and copy of one Sanborn, Deputy Sheriff, about January 29th of the current year.
>
> Without wasting my time, or that of His Excellency, I remit, in behalf of whoever you think ought to pay the same, the amount claimed by you, adding some odd cents for interest, etc., making a total, as you see, of Two ($2.00) Dollars, Federal Currency. This is from my own pocketbook and without not only consultation with and approval of any of those whose indebtedness I am thus releasing, but without even any information or belief on their part, or any knowledge of my action.
>
> You will, of course, appreciate my motive in so generous an act, and esteem it in proportion to the value you set on the claim itself which is both so just and so natural for you.
>
> As I wish to avoid the personal recognition of the Governor and his friends of this act of unique liberality, and, likewise, of that of an appreciating public, both of which might and, undoubtedly, would be brought in to weigh upon it should this become heralded abroad, I must ask you not to tell of it.
>
> And oblige,
>
> Yours truly,
> Wm. L. Burt
> Atty.
>
> P.S. If, without additional charge, I can have a receipt for this remittance, you will, by sending it, further oblige,
>
> Yours truly,
> Wm. L. Burt
> Atty."

Despite Mr. Burt's protestations, a copy of this letter went to Governor Andrew, as well as the original to the Count. Apparently the latter remained unsatisfied, for on November 10, 1862, he notified Mr. Burt of his intention to move the court on the following Saturday for a default judgment on the ground that no answer had been filed to his bill.

Meanwhile Governor Andrew was fully occupied with other matters. A schism had appeared in the Republican Party, the more radical element, led by the Governor and Senator Sumner in Massachusetts, favoring immediate emancipation by presidential proclamation, and the conservatives, under the leadership in the state of Judge Joel Parker, opposing it. The latter, facing defeat within the party boundaries, issued a call for a convention to form a new party, to be called the "People's Party", which was to nominate a state ticket on a platform of unconditional support of the President. Governor Andrew, nearing the end of his first term, had been renominated as standard-bearer of the orthodox Republican Party within the state.

On the day after the issuance of the call for the "People's Party" convention, President Lincoln promulgated the Emancipation Proclamation; thus Judge Parker and his cohorts found themselves hoist by their own petard. When the convention of the "People's Party", committed in advance to support of the President, assembled in Faneuil Hall on October 7, 1862, it found itself in somewhat of a quandary. Balked of its opposition to Senator Sumner, whose position was now identical with that of the President, it turned its full fury upon Governor Andrew. Judge Parker publicly accused him of being responsible for the President's proclamation by the part which he had played in a conference of Northern governors held at Altoona, Pennsylvania; and Mr. Saltonstall read a letter which purported to establish on the authority of Governor Bradford of Maryland that Governor Andrew had, at the conference, recommended that General McClellan's removal should be urged upon the President. The Count Joannes was present at the convention to participate in and enjoy the Governor's discomfiture.

However, after the convention disbanded, it developed that Governor Andrew had not reached the Altoona conference until the day

14. William L. Burt, later Postmaster of Boston, had also represented Nickerson in the Count's suit against him. The Count later sued Mr. Burt for slander, alleging that in his closing argument in the *Nickerson* case he had implied that the Count was insane; but the suit was dismissed on demurrer on the ground that no special damages were alleged. See *Joannes v. Burt*, 88 Mass. (6 Allen) 236, 83 *Amer. Dec.* 625.

after the Emancipation Proclamation had been issued, and that the letter which Mr. Saltonstall had read was not from Governor Bradford but from some unidentified person who quoted Governor Bradford as having said that at the conference "no formal proposition" had been made as to the removal of Governor McClellan. Thus, as one writer put it, "it seems, first, that Mr. Saltonstall did not have any letter from Gov. Bradford; second, that what he did have, if anything, was from some nameless and irresponsible person; third, the Gov. Bradford did not say to this person anything like that which Saltonstall reported, but just the contrary; and fourth, that Judge Parker and the Count Joannes and the audience generally, who wagged their heads and shouted derisively over the conviction of Governor Andrew, were as greatly mistaken 'as if they had lost their shirts'."[15]

The Count did not obtain his default judgment, for on January 5, 1863, he served notice upon Mr. Burt that he intended to ask for additional time within which to file exceptions to an order of the court requiring "an endorser to the writ". Apparently the Count was unable to furnish acceptable security for costs, a situation which arose not infrequently during his subsequent career. No doubt he remained unable to do so, and the suit was dismissed on that ground, for no further proceedings appear in it.

The Count remained in Boston for a little more than a year, changing his residence for New York on March 20, 1864, where his subsequent career has already been described. Governor Andrew was duly elected for a second term, during which he served with distinction, surviving its termination by less than two years and meeting his death as the result of a stroke on the last day of October of 1867, at the age of 49.

Thus the Count passed into obscurity, and the Governor into his niche in history, after their brief hour of unequal opposition. And if it now appears that the Governor was on the side of the angels, it does not necessarily follow that the Count was in the camp of their traditional opponents. For who is to say that he was entirely in the wrong?

15. The quotation, from a letter signed "Warrington" to the Springfield *Republican* dated October 11, 1862, is taken, as is the foregoing information, from Pearson, *The Life of John A. Andrew*, Volume II, Pages 53-57.

Jefferson's Library

(Continued from page 392)

Jefferson undoubtedly took better care of the materials in his possession than the public officials did of those in their charge. He preserved his manuscripts "by wrapping & sewing them up in oiled cloth, so that neither air nor moisture" could attack them. The paper was in such a state of decay that it would fall to pieces on being touched. Since these documents could never be examined but once, Jefferson retained them intact until such time as the public wished an authentic copy to be made.[40] When in 1795 a committee composed of George Wythe (Jefferson's law teacher and eminent Virginia judge), John Marshall (later Chief Justice of the United States), and several others, was appointed by the legislature to bring together and publish the statutes relating to lands, Wythe requested permission for the committee to use Jefferson's collection of laws.[41]

Jefferson took advantage of this occasion to urge that the project be expanded and "that there should be printed at public expense, an edition of all the laws ever passed by our legislatures which can now be found".[42] Wythe distributed a printed copy of Jefferson's letter to every member of the Virginia legislature.[43] The proposal did not bear fruit, however, until more than a decade later, when Hening undertook publication of *The Statutes at Large* under authority given by an Act of Assembly.

It was largely due to Jefferson's impetus and assistance that Hening's publication of the Virginia Statutes was made possible at all. In the preface to his first volume, Hening justly made the acknowledgement that "Thomas Jefferson, late President of the United States, has contributed more than any other individual to the preservation of our ancient laws. He very early employed himself in collecting them for public use; and to his assistance the editor is chiefly indebted for the materials which compose the present work."[44]

The first volume of Hening's *Statutes* was published on October 21,[45] 1809. Succeeding volumes appeared in 1810, 1812 and 1814. Publication was resumed in 1819 and continued until the thirteenth volume came from the press in 1823. In the same year a second edition of the first three volumes was published. Volume Four had been reissued in 1820, all the sheets except for 150 copies or so having been

40. Jefferson to George Wythe, January 16, 1796, 8 Ford, *The Works of Thomas Jefferson* (1904) 214; Jefferson to John D. Burk, June 1, 1805, 10 *ibid.* 147, 148.

41. George Wythe to Jefferson, January 1, 1796. Jefferson sent his printed laws to Wythe, requesting that they be bound before use. Jefferson to Wythe, January 12, 1796. On May 29, 1799, Jefferson wrote to Wythe that George Jefferson would take charge of having the binding done. Library of Congress, Jefferson Manuscripts. Jefferson to George Jefferson, May 29, 1799; George Jefferson to Jefferson, June 3, June 10, July 29, 1799. Massachusetts Historical Society. See note 30 *supra*.

42. Jefferson to Wythe, Monticello, January 16, 1796. 8 Ford, *The Works of Thomas Jefferson* (1904) 214-18.

43. On receipt of Jefferson's letter the committee "declined proceeding in the business" relating to the land laws "in hopes the general assembly may be persuaded, by the reasons which you suggested, to extend the work". Wythe asked permission, which Jefferson promptly granted, "to deliver a printed copy of the letter to every member". Wythe to Jefferson, July 27, 1796; Jefferson to Wythe, August 8, 1796. Library of Congress, Jefferson Manuscripts, where one of two known copies of the printed broadside is preserved. Randolph G. Adams, "Thomas Jefferson, Librarian," in *Three Americanists* (1939) 69, 77.

44. 1 Hening, *The Statutes at Large*, iv.

45. "I have now the pleasure of presenting to you the first volume of my Statutes at Large, which was published on yesterday only." Hening to Jefferson, Richmond, October 22, 1809. Library of Congress, Jefferson Manuscripts.

burned in a fire on July 16, 1815, at Petersburg where they had been sent to be bound.[46]

Truly Hening's *Statutes at Large*, just as much as Jefferson's own celebrated revisal of the laws of Virginia[47] after the Revolution in order to adapt them to republican principles of government, stand as a monument to Jefferson's legal and historical scholarship.

Besides preserving the statutory law of Virginia, Jefferson assembled a volume of early judicial decisions rendered by the General Court of that Colony. Posthumous publication of this report in 1829 added his name to the list of law reporters whose labors enable courts to follow the precedents established in previous cases, and to apply the rule of *stare decisis* which the legal profession so tenaciously cherishes.

Legal history was not the only field of learning which benefited from Jefferson's activity as an archivist. The wide range of his information and interest is shown in his well-known *Notes on Virginia*. This book was written to furnish data desired by a French consular representative, and was later published in Europe. Several editions were subsequently issued in America.[48] Jefferson also urged Hening to print a collection of state papers upon completion of *The Statutes at Large*;[49] and he furnished substantial assistance to Ebenezer Hazard in the latter's efforts to gather materials for publication in two volumes of *Historical Collections* which appeared in Philadelphia in 1792-94.[50] The extent of Jefferson's contribution to Burk's *History of Virginia* has already been mentioned. *The Records of the Virginia Company of London* were published during the present century from a manuscript that had belonged to Jefferson.[51]

These activities as a patron of scholarship and scientific thought were in keeping with Jefferson's political philosophy of freedom. He knew that ignorance and liberty were incompatible. "If a nation expects to be ignorant and free . . . it expects what never was and never will be."[52] Thus his solicitude for the collection and care of historical documents proved useful not only to the individuals whose liberty was vindicated in one striking instance by a manuscript from Monticello, but also to the courts, to lawyers, historians and the general public. By preserving the laws of Virginia and other important state papers and historical data for posterity and encouraging their publication, Jefferson rendered a unique public service. For this, in addition to the long list of his other diversified accomplishments, he is gratefully remembered today. All who cherish freedom of the human mind and spirit, who are concerned with the unfettered development of science and learning, as well as those who steadfastly cling to the American traditions of self-government and political liberty, unite in honoring the name of Thomas Jefferson.

46. William H. Martin, "Hening and the Statutes at Large", 13 *Va. Law Register* (N.S.) (1927) 25-37; Hening to Jefferson, Richmond, September 23, 1816. Library of Congress, Jefferson Manuscripts.

47. William E. Ross, "History of Virginia Codification," 11 *Va. Law Register* (1905) 79-101; 1 Ford, *Works of Thomas Jefferson* (1904) 66-67; 2 Boyd, *The Papers of Thomas Jefferson* (1950) 305-664.

48. Randolph G. Adams, "Thomas Jefferson, Librarian," in *Three Americanists* (1939) 69, 78-79.

49. Jefferson to Hening, September 28, 1820, May 8, 1822; Hening to Jefferson, May 14, 1822. Library of Congress, Jefferson Manuscripts.

50. 1 Boyd, *The Papers of Thomas Jefferson* (1950) 144-49, 164, 176.

51. Susan M. Kingsbury, *The Records of the Virginia Company of London*. 4 vols. Washington, 1906-1935. See Jefferson to Hugh P. Taylor, Monticello, October 4, 1823, 15 Lipscomb and Bergh, *The Writings of Thomas Jefferson* (1905) 471-73.

52. Jefferson to Charles Yancey, January 6, 1816. 11 Ford, *The Works of Thomas Jefferson* (1904) 493, 497. Jefferson's well-known services to public education, in particular his bill for the "diffusion of knowledge" and his activities as "father of the University of Virginia" are thoroughly analyzed in Roy J. Honeywell, *The Educational Work of Thomas Jefferson* (1931); and his own accomplishments as a scientist, especially in the circle of the American Philosophical Society, of which he was president from 1797 to 1814, are described in Daniel J. Boorstin, *The Lost World of Thomas Jefferson* (1948).

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